UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION III
1650 Arch Street
Philadelphia, Pennsylvania 19103-2029

September 23, 2002

Mr. David Baron
EarthJustice Legal Defense Fund
1625 Massachusetts Avenue, N.W., Suite 702
Washington, D.C. 20036

Dear Mr. Baron:

The Environmental Protection Agency (EPA) is writing in response to your letter of March 12, 2001 concerning potential deficiencies in the Maryland title V operating permit program. Your letter was in response to EPA's announcement made in the Federal Register (65 FR 77376) on December 11, 2000, soliciting comments on all State title V programs. On December 14, 2001, EPA responded to your March 12, 2001 letter by informing you that Maryland did not receive full approval of its part 70 operating permit program. Rather, on December 5, 2001, EPA announced that a part 71 federal operating permit program was in effect in Maryland. Because an approved part 70 program was not in effect in Maryland, EPA did not specifically respond to each of your comments at that time. The Agency committed to responding to your comments in the future.

We have since carefully considered the concerns raised in your March 12, 2001 letter. Some of your concerns have been addressed by the State of Maryland. In addition, EPA has determined that a number of the issues do not indicate any deficiencies in Maryland's title V operating permit program. Our response to each of your comments is enclosed.

We appreciate your interest and efforts in ensuring that Maryland's title V operating permit program meets all federal requirements. If you have any questions regarding our analysis, please contact Ms. Makeba Morris, Chief, Permits and Technical Assessment Branch at (215) 814-2187.

Sincerely,

Judith M. Katz, Director
Air Protection Division

Enclosure

cc: Ms. Ann Marie DeBiase
Maryland Department of the Environment

Enclosure

EPA's Response to Earthjustice's March 12, 2001 Comments on Maryland's Title V Operating Permit Program

Comment 1: Pursuant to 40 CFR § 70.4(b)(9), Maryland is required as part of its title V program to commit to submit at least annually to EPA information on the State's enforcement activities, including the number of criminal and civil, judicial and administrative enforcement actions. We have been unable to find any such commitment as part of Maryland's approved title V program. Moreover, when we last requested copies from EPA of Maryland's annual enforcement reports pursuant to 40 CFR § 70.4(b)(9), we were told that none had been submitted.

EPA Response to Comment 1: In Maryland's 1995 submittal of the State's part 70 operating permit program, Maryland included a commitment to submit at least annually to EPA information regarding Maryland Department of the Environment's (MDE) enforcement activities including the number of criminal and civil, judicial and administrative enforcement actions either commenced or concluded; the penalties, fines, and sentences obtained in those actions; and, the number of administrative orders issued. The mechanism for reporting this information is through data input into the AIRS Facility Subsystem/Aerometoric Information Retrieval System (AFS/AIRS). To date, MDE has provided this information into the AFS/AIRS database in a timely fashion. A copy of the latest input into AFS/AIRS database is attached to this document. See Attachment 1. MDE also submits to EPA an Annual Enforcement and Compliance Report which also provides enforcement information including the number of compliance assistance actions rendered, corrective actions issued, stop work orders, injunctions obtained, penalty actions, and referrals to the Maryland Attorney General for possible criminal actions. A copy of the "State FY 2002 Enforcement and Compliance Report" is attached to this document. See Attachment 2.

Comment 2: Under Ann. Code Md. 2-106, a determination by MDE that air pollution exists or that a rule or regulation has been violated does not create any presumption of law or finding of fact for the benefit of any person other than the State. The same provision states: No person other than this State acquires actionable rights by virtue of this title. These provisions illegally limit the right and ability of citizens and EPA to enforce title V permits and requirements. The State has no authority to restrict the kind of evidence that EPA or citizens can use in enforcement proceedings or dictate the weight to be given such evidence. Moreover these provisions violate the State's statutory role as primary administrator and enforcer of title V within its borders. It is also completely contrary to title V for the State to bar anyone other than itself from obtaining actionable rights under its title V program. If EPA and citizens have no actionable rights to enforce State title V permits and other requirements, then Maryland's title V program is grossly deficient and its approval must be withdrawn. The above cited provisions also illegally restrict EPA from relying on State findings of violations.

EPA Response to Comment 2: EPA disagrees with your interpretation of Maryland's law set forth at Ann. Code Md. 2-106. This section reads, in whole:

> 2-106 Rights of persons other than this State.
> (a) Presumption and finding of fact. -- A determination by the Department that air pollution exists or that a rule or regulation has been disregarded or violated does not create any presumption of law or finding of fact for the benefit of any person other than this State.
> (b) Proceedings. -- Any proceedings under this title shall be brought by the Department for the benefit of the people of this State.
> (c) Actionable rights. -- No person other than this State acquires actionable rights by virtue of this title.

This statutory section provides that, under certain circumstances, the burden will shift from the usual rule that the State plaintiff must prove a violation of the State air laws to a presumption of violation that the defendant must rebut. The shift in burden of proof is triggered by a determination by MDE "that a rule or regulation has been disregarded or violated." No one other than the State is entitled to this presumption.

We note that 2-106(b) and (c) also prevent citizens' from bringing suit in state or federal court to enforce the provisions of the State's air quality control law. See United States v. SCM Corp., 615 F. Supp. 411, 413 (D. Md. 1985); Maryland Waste Coalition v. SCM Corp., 616 F. Supp. 1474, 1477 (D. Md. 1985). However, this does not constitute a deficiency in Maryland's title V program. Nowhere in the Clean Air Act (CAA) did Congress expressly condition full EPA approval of a state title V operating permit program on a citizen's suit provision under state law analogous to that provided in the federal CAA. Nor has EPA in 40 CFR part 70 required such as a condition for full approval.

That being said, under the CAA and 40 CFR part 70, citizens have the "opportunity for judicial review in State court of the final permit action by the applicant, any person who participated in the public participation process... and any other person who could obtain judicial review under State laws." 42 U.S.C. 7661a(b)(6); 40 CFR § 70.4(b)(3)(x). This restriction against citizen's suits in 2-106 does not apply to judicial review of the final permit action, which Maryland law expressly allows.

In addition, under title V, citizens have the right to petition the Administrator to object to a title V permit pursuant to 42 U.S.C. 7661d(b)(2) if the Administrator has not objected to the permit during EPA's 45-day review period. Any denial of a petition for objection is subject to judicial review in the appropriate United States court of appeals. Maryland law does not restrict citizens' ability to petition the Administrator or appeal denials thereof in federal court. Indeed, consistent with part 70, Maryland's title V regulations provide for such petitions. See COMAR 26.11.03.10.

Furthermore, the language of 2-106 does not impose any restriction on a State or federal

court in considering or weighing as evidence a "determination by the Department." In particular, the language of 2-106 does not preclude the use by any person of any credible evidence to establish a violation of the CAA and does not alter sources' obligations to consider any credible evidence when making compliance certifications under the CAA. The statute merely creates a presumption, or finding of fact in favor of the State, when the Department has made "a determination . . . that air pollution exists or that a rule or regulation has been disregarded or violated. . . ."

Importantly, 2-106 does not state that a finding of the State cannot be introduced as evidence in a judicial or administrative proceeding. The language of 2-106 does not inform a court how to (or how not to) weigh evidence by a non-State plaintiff, nor does it prevent a citizen or EPA plaintiff from introducing whatever underlying evidence that the State used in making its determination that a violation has occurred. The statute merely prevents a court from granting a presumption that an alleged violation in fact occurred, or automatically making a factual finding in a non-State plaintiff's favor with no more evidence being presented . *This is no different than the burden the citizen or EPA plaintiff would face had 2-106 never been enacted.*

Furthermore, nothing in the statute purports to affect the standards for admissibility of evidence under the Federal Rules of Evidence, which state "[a]ll relevant evidence is admissible, except as otherwise provided by the Constitution of the United States, by Act of Congress, by these rules, or by other rules prescribed by the Supreme Court pursuant to statutory authority." Fed. R. Evid. 402. Relevant evidence is any "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable than it would be without the evidence." Fed. R. Evid. 401. We note that had Maryland attempted to prescribe the types, kinds and weights to be ascribed to evidence entered in a federal forum, such an action would have obvious implications on the system of federalism established by the United States' Constitution. The Maryland statute discussed here raises no such implications.

The failure of 2-106 to extend the benefit of any presumption that the State would have if it were a plaintiff to other potential plaintiff classes does not constitute a deficiency. As is true in most civil actions, it is long established that the burden is on the plaintiff to prove by a preponderance of the evidence that a defendant is in non-criminal violation of a federal air pollution statute or regulation. See e.g., U.S. v. Walsh , 783 F. Supp. 546 (W.D. Wash. 1991), aff'd, 8 F.3d. 659 (9th Cir. 1993), cert. denied 511 U.S. 1081 (1994).

Comment 3: Maryland law prohibits MDE from requiring permits for boilers used to operate steam engines for farm and domestic use. Ann. Code. Md. 2-402. This exemption is contrary to title V and EPA rules that allow no such blanket exemption.

EPA Response to Comment 3: EPA agrees that current Maryland law exempts from permitting requirements any boiler used exclusively to operate steam engines for farm and domestic use. However, MDE has provided EPA a statement with supporting documentation that no boilers used exclusively to operate steam engines for farm and domestic use currently exist in the State. MDE surveyed the Maryland Cooperative Extension (a part of the University of Maryland that

provides technical assistance to farmers throughout the State of Maryland). The Cooperative Extension has a main office at the University of Maryland and local offices in each of Maryland's 23 counties and Baltimore City. MDE surveyed each county office of the Cooperative Extension. Each county office confirmed that they are not aware of any steam engines used for farm and domestic use in Maryland. See Attachment 3. On the basis of this survey, MDE has concluded that steam engines for farm and domestic use are obsolete and are only operated for demonstrations of historical farm equipment. The State also has provided an Attorney General's opinion stating that since there are no sources subject to the exemption, Maryland's title V operating permit program applies to all sources that are required to be covered by the title V permit program. See Attachment 4. With the State's affirmation and Attorney General's opinion, EPA believes this law does not have any practical significance in Maryland and agrees with MDE that Maryland's operating permit program applies to all sources that are required to be covered by title V.

Comment 4: Maryland law provides for "fuel" variances that conflict with title V found in Ann. Code Md. 2-501 to 505. These provisions allow for violation of emission limits based on claims by a source of difficulty in obtaining clean fuel. Maryland law also allows MDE - after a hearing on a corrective action order - to grant an "exception" from a rule or regulation at Code Md. 2-606 (2). Title V does not allow for ad hoc variances or exceptions. EPA rules allow a limited defense based on "emergencies" but the above provisions go far beyond that. The State's variance and exception provisions violate title V's mandate that permits require compliance with all applicable requirements. They also violate title V requirements for formal permit amendment- including public notice, public comment, and right to petition EPA - before emission limits and other substantive permit requirements can be finalized.

In the past, EPA has asserted that variance provisions are "wholly external" to title V programs and therefore not binding on EPA. Such a position is legally indefensible here. The above-cited variance provisions are a part of the State's law governing air pollution sources, including title V sources. It is no answer to say that EPA can object to variances, because it is the State's job in the first instance to ensure that title V requirements are met, and because EPA cannot possibly police every title V permit and every variance that might be granted. Where (as here) the State refuses to adopt a program that complies with title V, then EPA must find it inadequate.

EPA Response to Comment 4: EPA does not agree that Maryland law found in Ann. Code Md. 2-501 to 505 that provides for "fuel" variances is in conflict with title V regulations. Ann. Code Md. 2-501authorizes the Department, on a case-by-case basis, to "grant a temporary fuel variance to any person who is unable to obtain the type of fuel required to comply with any rule, regulation, or order" issued under Maryland's ambient air quality control law. To seek such a variance, a person must petition the Department according to specified procedures, and the Department must schedule a public hearing following publication of notice thereof. See Ann. Code Md. 2-502, 2-503. After such a hearing, the Department may either "[g]rant a temporary fuel variance, subject to federal requirements, for a period of not more than 120 days," if a temporary fuel variance has not been previously granted, or, if an emergency variance has been

previously granted, "[e]xtend the emergency temporary fuel variance, subject to federal regulations, for a period of not more than 120 days from the date the variance was first granted" (emphasis added). Ann. Code Md. 2-503(e).

Further, Ann. Code Md. 2-501 to 505, state statutory provisions, are not part of the Maryland State Implementation Plan (SIP). Any fuel variances granted pursuant to this provision would not be federally enforceable. If Maryland were to attempt to create a federally enforceable fuel variance using the title V permit process, the permit modification would be subject to the title V permit modification procedures including public notice, public comment and the right to petition EPA. At that time, EPA and the public could object to the issuance of the permit because the variance does not represent a federally enforceable applicable requirement due to the fact that the variance provision has not been approved as part of Maryland's SIP. Moreover, Ann. Code Md. 2-503(e) clearly provides that any temporary fuel variance or emergency fuel variance is subject to federal requirements, which include CAA requirements generally and part 70 requirements in particular. Thus, to the extent that a State-only enforceable fuel variance conflicted with part 70 requirements, the part 70 requirements would effectively trump the variance so that the variance would have no practical effect.

The EPA will continue to review the title V operating permits issued by Maryland and seek to ensure that the State does not propose in a permit any terms based on non-federally enforceable applicable requirements that conflict with federally-enforceable applicable requirements. If during its oversight, the Agency determines that Maryland is unlawfully including such a variance in an operating permit, EPA has a statutory obligation to object to that permit and, if warranted, issue a notice of deficiency. See 42 U.S.C. §7661d(b).

EPA also does not agree that Ann. Code Md. 2-606, another state statutory revision, is in conflict with the title V regulations. Ann. Code Md. 2-606 states:

> On the basis of the evidence produced at a hearing, the Secretary or the designated hearing officer may issue a corrective or other final order: 1) granting an exception from a rule or regulation adopted under this title on such conditions as the Secretary may determine; or 2) directing the person charged to comply, within a specified time, with any rule or regulation that the person is found to be violating.

This rule allows an exception to a rule or a regulation only on the basis of evidence produced at a hearing that is being held to examine all information relating to an alleged offense. The law provides the Secretary the discretionary authority to grant an exception from a rule or to direct the person charged to comply with the rule or regulations. This exception from a rule or regulation may be granted only after thorough review and consideration of evidence during a hearing by the Secretary or its designated hearing officer. EPA believes that the law provides adequate due process and safeguards to prohibit any inappropriate exception to a rule or regulations. Further, Ann. Code Md. 2-606, state statutory provisions, are not part of the Maryland State Implementation Plan (SIP). Any exceptions granted pursuant to this provision would not be federally enforceable.

Comment 5: Maryland law allows the State to return up to 75 percent of a civil penalty paid under a settlement if the violator satisfies MDE that the violation has been eliminated. This approach amounts to waiver or variance provision that conflicts with title V. Moreover, it undermines the deterrent purpose of title V penalties and conflicts with EPA penalty policy.

EPA Response to Comment 5: EPA does not agree that the law allowing up to 75 percent of a penalty to be returned to a violator is in conflict with title V of the CAA and EPA's implementing regulations. The CAA requires only that permitting authorities have adequate authority to recover civil penalties in a maximum amount not less than $10,000 per day per violation. 42 U.S.C. 7661a(b)(5)(E); 40 CFR § 70.11(a)(3)(i). Maryland law meets these requirements. See Ann. Code Md. 2-610(a) (authorizing the collection of civil penalties not exceeding $25,000 per day per violation). In addition, 40 CFR § 70.11(c) indicates that a civil penalty assessed, sought or agreed upon by the permitting authority shall be appropriate to the violation. Nothing in the CAA or the part 70 regulations prohibits MDE, the permitting authority, from choosing, as a matter of enforcement discretion, to return up to 75 percent of the penalty paid under certain criteria if MDE, with the Maryland Attorney General's concurrence, deems it appropriate. EPA has no evidence that Maryland has ever used this provision in the title V program. Therefore EPA does not agree that this law represents a deficiency in the State's part 70 program.

Comment 6: Under Maryland law found at Ann. Code Md. 2-611, a person is not subject to an action for violation of the State's air pollution laws or rules if the person acts in accordance with a plan of compliance submitted to and approved by MDE. This provision conflicts with title V, which does not allow variances, exceptions or immunity from enforcement merely because a source has adopted a compliance plan. The State provision amounts to a blanket waiver or suspension of applicable requirements, and an amendment of the permit without following required modification procedures, all in violation of title V. Moreover, the provision could preclude citizens and EPA from enforcing permit requirements - a result wholly contrary to title V.

EPA Response to Comment 6: Ann. Code Md. 2-611 provides:

> A person is not subject to action for a violation of this title or any rule or regulation adopted under this title so long as the person acts in accordance with a plan for compliance that (1)the person has submitted to the Secretary; and (2) the Secretary has approved, with or without amendments, on the recommendation of the Air Management Administration. The Secretary shall act on any plan for compliance within 90 days after the plan for compliance is submitted to the Secretary.

When a State is diligently prosecuting a facility for violations of its permit, it is typical and reasonable to give a facility a compliance schedule to bring a facility into compliance with its permit conditions. Indeed, EPA's regulations at 40 CFR §§ 70.5(c)(8)(iii)(C) and 70.6(c)(3) require that a title V permit application and permit include a compliance plan containing a

compliance schedule for requirements for which the covered source is not in compliance at the time of permit issuance. If a facility must modify its permit due to the conditions of a compliance plan, then that facility should follow all proper procedures to modify its permit as needed. This Maryland law does not allow a title V source to bypass the permit modification process. In addition, the State law does not prevent EPA from enforcing permit requirements (as noted in response to Comment 2, Maryland law does not contain a general citizen suit provision to enforce violations of its air pollution regulations, including permit requirements; however, this is not a legal deficiency in the Maryland program).

Further, neither EPA nor MDE interprets Ann. Code Md. 2-611 as a blanket waiver or suspension of any other applicable requirements for a source. Maryland has submitted to EPA a an opinion from the Maryland Attorney General that affirms MDE and EPA's position that the law applies only to violations that are expressly addressed by the compliance plan. See Attachment 4. EPA does not agree that Ann. Code Md 2-611 represents a deficiency in the State's part 70 program.

Comment 7: Pursuant to 42 U.S.C. 7661a, the Administrator on July 3, 1996 granted interim approval to the Maryland's operating permit program under title V of the Act (permit program). 61 Fed. Reg. 34733 (1996). The effective date of the State's permit program was August 2, 1996. Pursuant to 42 U.S.C.7661b(c), the State was required to establish a phased schedule for acting on permit applications submitted within the first full year after the effective date of the permit program. Such schedule was required to assure that at least one-third of such permits would be acted on by the State annually over a period of not to exceed 3 years after such effective date. 42 U.S.C. 7661b(c). Thus, according to the statutorily mandated schedule, the State was required to complete action by August 2, 1999 on all permit applications submitted in the first year of its permit program.

Maryland is in gross violation of this legal mandate. EPA's own figures show that, as of February 2001, Maryland had issued title V permits to only 47% of its initial title V sources. Maryland is therefore failing to adequately implement its title V program. EPA has repeatedly cited timely completion of permit issuance has a high priority in internal memoranda and correspondence to the states, and therefore must publish notice that Maryland is failing to adequately implement its program due to this deficiency.

EPA Response to Comment 7: EPA agrees that before EPA delegated Maryland a part 71 permit program on December 1, 2001, MDE's title V issuance rate was behind schedule and all its title V sources should have been permitted. The part 71 federal permitting program replaced Maryland's interim approval part 70 program and is currently effective and being implemented in the State. With the start of a part 71 program, the permit issuance clock was restarted. All sources that did not have a part 70 permit as of December 1, 2001 were to have submitted a new application by May 31, 2002. All part 71 permits must be issued within a 3- year period. In accordance with 40 CFR § 71.4(i)(2), final permits must be issued for at least one-third of the part 71 applications annually over a period not to exceed 3 years after the effective date of the part 71 program.

In addition, EPA has received from MDE a commitment concerning permit issuance when and if Maryland receives approval of its part 70 permitting program. See Attachment 5. MDE has committed to issuing the remaining part 70 permits within a two-year time frame. The State currently has 47 sources that have not received a final part 70 or part 71 permit. EPA will monitor MDE's compliance with its commitment by performing semiannual evaluations. As long as MDE issues permits consistent with its milestones, EPA will consider that Maryland has taken "significant action" toward permit issuance such that a NOD is not warranted. If MDE's permit issuance falls behind the schedule set forth in the commitment letter, EPA will revisit the issuance of an NOD.

Comment 8: Pursuant to 42 U.S.C.7661a(b)(3)(C)(iii), any title V permit fees collected by a State must be used solely to cover costs required to support the permit program. In a March 26, 1999 letter to the State, EPA found that title V permit money collected by Maryland was being spent on non-title V expenses. According to the letter, almost $1.6 million of the State's $3.2 million in title V revenue in fiscal year 1998 was spent on non-title V activities. EPA specifically found such expenditures to be "in violation of Section 502(b)(3)(C)(iii) of the Clean Air Act (CAA), 42 U.S.C. Section 7661a(b)(3)(C)(iii)."

Material submitted to us in response to our 1/17/01 FOIA request on the Maryland title V program (03-RIN-00504-01) did not contain EPA findings that these deficiencies had been fully corrected. Unless the State has fully remedied the above-cited fee deficiencies - including a rebate to the title V programs for previously misdirected title V fees - EPA must find that the State is failing to adequately implement its title V program.

EPA Response to Comment 8: EPA is in agreement that Maryland had deficiencies with regard to their title V fee expenditures as outlined in EPA's fee audit conducted in 1998 entitled "Review of Maryland's Approved Operating Permit Program." EPA also agrees that at that time of the public review of its title V program, Maryland had not fully responded to EPA's correspondence to MDE regarding remaining fee audit issues. In response to EPA's continued concern and your public comment surrounding Maryland's title V fee expenditures, MDE has submitted to EPA a report entitled "Title V Program Cost (Revenue v. Expenditures)," dated September 24, 2001. See Attachment 6.

EPA has carefully reviewed the report and MDE's title V implementation since 1999. Since the 1998 audit, MDE has increased its title V program accomplishments and expenditures. MDE has expanded its Title V staff and resources to adequately administer and enforce its title V permits. MDE has received and processed most of the State's title V applications. Since, 1999, it has issued 120 final permits. MDE has appropriately administered each title V permit including providing public notice, keeping administrative records, responding to comments, and performing permit modifications and amendments. In addition to increased title V activity since 1998, the title V program cost report provides a reasonable and sound method to account for its fee collection and expenditures for the future. Most significantly, the report determines that revenue for 2002 generated from title V sources will be spent solely on title V activities.

MDE's fee report coupled with MDE's increased performance implementing the title V program since 1998 has convinced EPA that MDE has adequately addressed its fee program deficiencies for the future. As further reassurance, EPA will continue to monitor in the upcoming year, MDE's title V revenue and expenditures. Under the part 71 permitting program, EPA will require MDE to submit an annual fee report that details its title V revenue and expenditures. If, and when, MDE's part 70 permitting program is approved, EPA will continue to monitor MDE's title V revenues and expenditures. EPA is firmly committed to assisting MDE to move forward in its title V permitting and to ensure that any past accounting errors of title V fees are not repeated.

Comment 9: Title V requires a permit for any "major" source, defined to include a source with actual or potential emissions of 100 tons per year (tpy) of "any" air pollutant. 42 U.S.C. 7602; 40 CFR § 70.2. Maryland's analogous provision at COMAR 26.11.02.01C limits "major" sources to those that emit or have the potential to emit 100 tpy of any "regulated" air pollutant. The State's definition is substantively narrower than the title V definition and is therefore inadequate.

EPA Response to Comment 9: EPA agrees with your comment. EPA informed MDE of this deficiency in its regulations and MDE has revised its regulations by deleting the word "regulated" in the definition of a major source found at COMAR 26.11.02.01C. The regulation change was proposed for adoption in 28:19 Maryland Register 1734-1735 on September 21, 2001. The regulation was adopted as proposed in 28:24 Maryland Register on November 30, 2001. The effective date of the regulation change was December 10, 2001. On September 10, 2002, EPA proposed to approve this regulation change in the Federal Register. See 67 FR 57496. EPA encourages you to review the proposed rulemaking and provide any comments, if warranted, by October 10, 2002.

Comment 10: At COMAR 26.11.03.01B(4), the State exempts from title V permitting any source (even a major source) that is "not subject to an applicable requirement of the Clean Air Act". No such exemption is allowable under title V.

EPA Response to Comment 10: EPA agrees with your comment. EPA informed MDE of this deficiency in its regulations. MDE has revised its regulation by deleting the phrase "A source that is not subject to an applicable requirement of the CAA" found at COMAR 26.11.03.01B(4). The regulation change was proposed for adoption in 28:19 Maryland Register 1734-1735 on September 21, 2001. The regulation was adopted as proposed in 28:24 Maryland Register on November 30, 2001. The effective date of the regulation change was December 10, 2001. On September 10, 2002, EPA proposed to approve this regulation change in the Federal Register. See 67 FR 57496. EPA encourages you to review the proposed rulemaking and provide any comments, if warranted, by October 10, 2002.

Comment 11: At COMAR 26.11.03.04, 26.11.02.10B-U, the State allows exclusion of numerous emission units and activities from title V permit applications without having justified such exclusion as required by EPA rules. Among the activities excludable under this provision

are various kinds of fuel burning equipment, stationary internal combustion engines of certain sizes, certain VOC degreasing containers, plating containers, and any other emission units not subject to an applicable requirement. The State's rules do not provide the criteria or justifications for excluding these units from permit applications, and therefore do not comply with title V.

EPA Response to Comment 11: Provisions under 40 CFR part 70 allow States, subject to EPA review, to promulgate lists of insignificant activities and emission levels in their permit programs. See 40 CFR § 70.5(c). The purpose of these lists is to identify activities or units that permit applicants may treat in a less exhaustive manner in their title V permit applications in order to reduce their paperwork burden. For example, applicants may not be required to submit certain State forms, such as detailed emission inventories and source description forms, for these activities or units. Applicants are nevertheless still required to provide all information in their applications that is needed to write an enforceable permit which ensures compliance with all applicable requirements and all title V requirements. For instance, applicants must include in their applications information on insignificant activities and units that is needed to determine which applicable requirements apply, whether the source is in compliance with these requirements, and whether the source is major.

The EPA supports the State's authority to develop and implement aspects of its operating permit program that are based on the State's expertise and experience and to do so in a manner that is consistent with title V, 40 CFR part 70, and the State's priorities. Moreover, neither part 70 nor EPA policy requires States to prepare justifications for insignificant activities along with their lists of insignificant activities for EPA review. If such justifications are prepared by the State, however, they must be submitted to EPA. See 40 CFR § 70.4(b)(2).

Lastly, it is important to note that not all of the insignificant activity provisions that the commenter cites were previously approved by EPA in its final interim approval of Maryland's title V program. See 61 FR 34733 (July 3, 1996). Since the time EPA granted final interim approval, MDE has changed its insignificant activities provisions. The new regulations were proposed by MDE in the Maryland Register on April 20, 2001(28:8 Md. R. 799-803). On June 8, 2001, MDE adopted the amendments to the Regulations with an effective date of July 9, 2001. On September 10, 2002, EPA proposed to approve this regulation change in the Federal Register. See 67 FR 57496. EPA encourages you to review the proposed rulemaking and provide any comments, if warranted, by October 10, 2002.

Comment 12A: At COMAR 26.11.03.06C(3), Maryland's approved title V program requires permits to specify monitoring of sufficient type and frequency to yield data that is timely, reliable, and representative of the compliance status of the source. We do not believe that Maryland is adequately implementing this requirement. For example, the permit for the Citgo facility in Baltimore requires tank inspections for leaks only once per year, and monitoring of VOC emission limits from loading rack operations only once every five years. Other examples of deficient monitoring provisions in MDE permits are cited in comments on specific permits submitted by EPA Region 3 to MDE under cover of letters dated December 1, 1998 (regarding

Citgo permit), December 8, 1999, February 3, 1999, and February 18, 2000.

EPA Response to Comment 12A: Consistent with 40 CFR § 70.6(c)(1), Maryland's title V permits, on whole, provide adequate monitoring that is sufficient to ensure compliance with all applicable requirements. The fact that EPA has commented on a draft permit does not indicate that MDE is issuing permits with inadequate monitoring. MDE provides EPA with each draft and proposed permit for our review and comments. MDE has responded appropriately to EPA's comments by either agreeing with the comments and making appropriate changes to the permit or providing a sound rationale for leaving the draft permit condition as it stands. To date, EPA has not found cause to object to the issuance of any final permits issued by MDE.

As part of the permit review process, the public, including the commenter, may review and submit comments on the draft permit, just as EPA does. If the commenter believes that a specific permit has inadequate monitoring, the commenter should provide comments during the public participation period for that permit. If the permitting authority does not adequately respond to the comments and if EPA does not object to the permit during its review period, a person may petition the Administrator within 60 days after the expiration of the Administrator's 45-day review period to make an objection. See 42 U.S.C. 7661d(b)(2), 40 CFR §70.8(d) and COMAR 26.11.03.10

Comment 12B: Maryland also fails to require regular reporting of all monitoring, especially parametric monitoring results. Where monitoring consists of inspection and record keeping, Maryland typically does not require routine reporting at all, but simply requires that the records be kept on site or submitted upon request. This does not comport with EPA rules, which require submission of reports of "any required monitoring" at least every 6 months, 40 CFR § 70.6(a)(3)(iii)(A). If a source is allowed to satisfy monitoring requirements via record keeping rather than emission measurement, then the records themselves are the required monitoring that must be submitted to the State. This is important as a compliance check, and also to enable citizen review (since citizens have no right to review records at the facility itself). Also, the State's rules do not comply with EPA rules for monitoring where applicable requirements do not specify a monitoring method. In particular, Maryland's rules do not expressly require such monitoring to yield reliable data from the relevant time periods as required by the federal rule. Compare COMAR 26.11.03.06C(3) with 40 CFR § 70.6 (a)(3)(B). The State rule also fails to require that test methods, units, averaging periods and other statistical conventions be consistent with applicable requirements as do the federal rules.

EPA Response to Comment 12B: 40 CFR § 70.6(a)(3)(iii)(A) requires the "submittal of reports of any required monitoring at least every 6 months." The federal regulations require that "[a]ll instances of deviations from permit requirements must be clearly identified in such reports." With the exception of a requirement to include deviations from permit requirements, the federal regulation does not specify what form the monitoring report must take and what information must be included in that report. Consistent with part 70, Maryland's regulations at COMAR 26.11.03.06C(7)(a)(i) and 26.11.03.06C(7)(b) require title V permittees to "[s]ubmit reports of required monitoring at least quarterly" and further require that "[a]ll instances of

deviations from permit requirements shall be clearly identified" in such reports.

In practice, Maryland requires all title V facilities to submit an excess emissions and deviations report every quarter, if that facility has any excess emission or deviations. Specifically, the reports must include: a summary of all excess emissions, exceedances, and excursions and monitor downtime; specific identification of each episode, including the nature and cause and the correction taken; dates and times of the onset and termination of the deviation, as well as the action planned or taken to reduce, eliminate, and prevent the recurrence of the deviation; and, as required by part 70, certification by a responsible official that the contents of the reports are true, accurate, and complete. Further any facility that is required to use continuous emissions monitoring systems (CEMS) must provide that data on a quarterly basis.

EPA believes that Maryland's regulations regarding monitoring are consistent with the federal regulations found at 40 CFR § 70.6. In addition, EPA generally believes that MDE has reasonably interpreted 40 CFR § 70.6(a)(3)(iii)(A) by specifying that the monitoring report should include pertinent and required data for the reporting of excess emissions and deviations. However, EPA agrees with the commenter that the monitoring report should be more than an excess emissions and deviations report submitted only if there are excess emissions. In this respect, EPA agrees that Maryland is not implementing its part 70 program consistent with the federal regulations that require the submittal of a 6-month monitoring report. EPA regards this particular issue as an implementation deficiency. The implementation deficiency does not indicate a deficiency with the approved regulations or legislation in the permitting authority's title V program. Rather, the permitting authority allegedly is not issuing permits consistent with its approved program and federal requirements. MDE has submitted a commitment that provides that all part 70 sources will submit monitoring reports at least once every six months in accordance with federal [See 40 CFR 70.6(a)(3)(iii) (A)] and State regulations and federal guidance. The commitment includes a statement that these monitoring reports will be submitted whether or not the facility is reporting an excess emission or deviation. See Attachment 5. EPA will not issue a notice of deficiency because the permitting authority's commitment that future permits will be issued consistent with State and federal requirements corrects the alleged deficiency.

While MDE is implementing a part 71 federal operating permits program, EPA will continue to ensure that an adequate 6-month monitoring report be required for each part 71 permit. In addition, if MDE receives full approval of the part 70 program, EPA will continue to monitor whether the permitting authority is implementing the program consistent with its approved program, the CAA and EPA's regulations.

With regard to record keeping, 40 CFR § 70.6(a)(3)(i)(B) states that record keeping provisions may be sufficient to meet the monitoring requirements of that provision. Maryland's regulations at COMAR 26.11.03.06C(3) allows MDE to determine whether record keeping requirements may be sufficient to meet these same monitoring requirements. The Maryland regulation, therefore, is consistent with 40 CFR § 70.6(a)(3)(i)(B).

While COMAR 26.11.03.06C(3) is not worded exactly the same as 40 CFR § 70.6(a)(3)(i)(B), the Maryland provision contains all of the essential elements of the federal provision. EPA interprets the Maryland provision to require that Maryland's title V permits contain monitoring to yield reliable data from the relevant time periods and EPA believes that MDE implements its regulation consistent with this requirement. Finally, COMAR 26.11.03.06C(1) requires that the general conditions in Maryland's title V permits require the use of consistent terms, test methods, units, averaging periods and other statistical conventions consistent with applicable emission standards and other permit requirements. This provision satisfies the similar federal requirements at 40 CFR § 70.6(a)(3)(i)(B).

Comment 13A: EPA rules require notice to, among others, persons who ask to be placed on a mailing list for title V notices, 40 CFR § 70.7(h)(i). Maryland does not provide such a clear and unfettered right to mailing list notice. Instead, the State only requires notice "as directed by the Department to any person who has made a timely request in accordance with procedures established by the Department for making the request." COMAR 26.11.03.07B(2)(b). This language does not provide for notice to persons who have asked to be on mailing list, and further imposes preconditions that are inconsistent with the federal rule. Under 40 CFR § 70.7(h)(1), a citizen need only ask in writing to be placed on a mailing list, there is no requirement that citizens follow additional procedures, that the request meet some unspecified test of timeliness, or that State decide to direct the permit applicant to provide such notice. When we last inquired at MDE about this issue, we were told that MDE did not maintain a general mailing list for notice of proposed title V permits. Although MDE does post some information on its web site regarding proposed permits, such postings do not always occur in a timely manner, and in any event such posting is not a substitute for mailing list notice.

EPA Response to Comment 13A: Maryland maintains title V mailing lists of persons who have requested to be put on such a list. EPA believes that MDE's procedure to be put on a mailing list is not burdensome and comports with federal requirements. Any individual may make a written or oral request to MDE's Air Quality Permits Program to be put on a title V mailing list. Upon receipt of the request, that individual will be immediately placed on the mailing list. In addition, Maryland does have a general mailing list for title V permits that provides notification to all elected officials such as mayors, town managers, etc., of a draft title V permit in its jurisdiction. EPA believes Maryland's regulations and practices for handling mailing lists are consistent with federal requirements.

Comment 13B: COMAR 26.11.03.07D has a threshold germaneness requirement for public comments. Under the rule, the State need not consider public comments if they are not "germane" to applicable requirements of title V and the Maryland rules implementing title V. Comments that relate "to the location or nature of a source or emission unit" may not be considered unless the commenter demonstrates to the satisfaction of the Department that the Department is required by law to consider the issues in issuing or denying the part 70 permit. These restrictions on the permissible content of public comment, and MDE's obligation to consider such comment, are contrary to title V. No where does title V allow states to limit the kind of public comments that may be raised or considered by the State. Such limits conflict with

the language of the Act and EPA rules requiring an opportunity for public comment, without any limitation on content. Maryland's restrictions on the comments it will consider further violates the Constitutional right of free speech and the right to petition public officials. Further, the limits are irrational and arbitrary in the extreme. For example, the location and nature of a source or an emission unit are matters of fundamental relevance to any title V permit. The State has no basis for insisting that commenters first demonstrate that the State is required by law to consider these matters before it will evaluate public comment thereon.

EPA Response to Comment 13B: EPA does not agree with your assertion that it is irrational or extreme for Maryland to consider only those comments that are germane to title V of the CAA and its implementing regulations. As an initial matter, we note that it is a common practice for statutes to exempt an agency from having to consider every comment it receives on a proposed action. For instance, the Maryland requirement is analogous to that set forth in the federal Administrative Procedures Act (APA), 5 U.S.C. § 553(c), which applies to EPA rulemaking generally. That section provides, in pertinent part:

> (c) After notice required by this section, the agency shall give interested persons an opportunity to participate in the rule making through submission of written data, views, or arguments with or without opportunity for oral presentation. After consideration of the relevant matter presented, the agency shall incorporate in the rules adopted a concise general statement of their basis and purpose. . . (emphasis added).

See also Hall v. U.S. EPA, 273 F.3d 1146, 1163 (9th Cir. 2001).

In the CAA itself, Congress enacted slightly different language with respect to the public comments received during rulemaking in Section 307(d)(6)(B) of the CAA. This section supercedes the APA requirements for certain enumerated actions listed in Section 307(d)(1). Section 307(d)(6)(B) requires EPA to respond to "each of the significant comments, criticisms, and new data submitted . . . during the public comment period." 42 U.S.C. § 7607(d)(6)(B). The United States Supreme Court has held that "irrelevant" comments are not "significant" as that term is used in the CAA, and EPA has no duty to respond to them. See Whitman v. Amer. Trucking Ass'ns., 531 U.S. 457, 149 L.Ed.2d 1, 121 S.Ct. 903, n. 2 at 470 (2001).

Thus, requirements that comments be "germane" under Maryland law, or "relevant" under federal law, are entirely consistent with each other. Importantly, under title V and part 70, there is an implicit concept of "germaneness" to applicable requirements.[1] Both the statute and EPA's

[1] See 57 Fed. Reg. 32250, 32290 (July 21, 1992) (stating in the preamble to the part 70 regulations that public objections to a draft permit, revision or renewal must be "germane to the applicable requirements implicated by the permit action in question" and that public comments will only be germane if they address the draft permit's consistency with applicable requirements or the requirements of part 70).

regulations require that a permitting authority assure compliance with applicable requirements, and a permit authority's authority to issue or deny permits derives from this obligation. It follows that a permitting authority's obligation to consider comments may be limited to comments relating to applicable requirements (although a permitting authority might not be precluded from considering other comments). MDE has the power to address only those comments that it has been conferred the authority to act on, specifically those relating to the applicable requirements of title V of the CAA. Thus, MDE's consideration of public comments may be limited to comments relating to those requirements.

It is also worth noting that neither Maryland nor federal law prevents a commenter from submitting materials that either agency would during their decision process, determine to be irrelevant, immaterial, or non-germane. Therefore, neither requirement is a prior restraint on free speech that improperly restricts the exercise of First Amendment rights (which encompass the right to petition and to be heard, but not the right to compel the State to issue a response).

While EPA believes that COMAR 26.11.03.07D(5) is consistent with the CAA and part 70, EPA understands that the "germaneness" requirement of this provision might be implemented in a way that could improperly limit public comments. However, EPA is unaware of any examples of improper implementation and believes that MDE has consistently and appropriately implemented this regulation. Therefore, EPA finds no basis for issuing a notice of deficiency on this issue.

Comment 14A: COMAR 26.11.03.12D requires the filing of appeals of permit decisions within 90 days after the decision is final, but makes no provision for timely notice of the decision to persons who filed comments during the comment period. It is violative of due process and contrary to title V to set a 90 day deadline on appeals for persons who are not assured timely notice that the 90 day clock has started.

EPA Response to Comment 14A: EPA believes that the requirement to file an appeal within 90 days after a final decision does not impose an unreasonable demand on the public, and is consistent with the pertinent requirements of the CAA and 40 CFR § 70.4(b)(3)(xii). Section 502(b)(6) of the CAA requires only that Title V programs "includ[e] an opportunity for judicial review in State court of the final permit action" and does not contain more specific requirements, and 40 CFR 70.4(b)(3)(x) contains similar language. Also, 40 CFR part 70 does not require a permitting authority to provide notification of a final action on a permit. See 40 CFR 70.7(h). EPA believes that 90 days is a reasonable amount of time to allow a citizen to determine whether a permit that was commented on by that citizen has been finalized and to file an appeal, if warranted. EPA is aware that proposed permits may not be immediately finalized after the EPA review and public comment period has ended, thereby, resulting in an unclear amount of time prior to the permit ultimately being issued. Nevertheless, we understand that it is MDE's policy to send notification of permit decisions to all persons who filed comments during the comment period. Further, EPA Region III provides information on its website regarding the initiation and expiration of EPA's 45-day review period for Maryland's proposed permits, as well as, final

permit issuance dates.[2] While not a requirement of the Clean Air Act or 40 CFR part 70, EPA feels that its important that this information is provided to the public in a number of ways.

Comment 14B: The same COMAR section limits judicial review of permit decisions to issues raised by the person seeking review. This provision is contrary to title V and EPA's rules, which provide that any person who participated in the public comment process must have an opportunity for judicial review, and do not limit the issues that such person can raise on appeal. Under federal law there is no generic requirement that an issue must have been raised during a public comment period before it can be raised on appeal. Although some specific statutes do require this, such a requirement merely means that the issue must have been raised by someone during the public comment, not that it must have been raised by the same person who is seeking judicial review.

EPA Response to Comment 14B: CAA Section 502(b)(6) (42 U.S.C. 7661a(b)(6)) and 40 CFR § 70.4(b)(3)(x) require only that the State provide "an opportunity for judicial review in State court of a final permit action by the applicant, any person who participated in the public comment process provided pursuant to Section 70.7(h) of this part, and other person who could obtain judicial review of such actions under State laws." So long as Maryland offers persons who participated in the comment process an opportunity for judicial review for issues that party itself raised, Maryland may restrict a petitioner from raising matters that were the subject of comments provided by persons other than itself who has abandoned its right to petition and still be consistent with the pertinent requirements of the CAA and 40 CFR part 70. While EPA does not believe that the Maryland standard represents an ideal system from the perspective of a person seeking to challenge a permit, we nevertheless believe Maryland's regulation is not inconsistent with the CAA and its implementing regulations.

Comment 14C: COMAR 26.11.03.12E limits the record for judicial review to "records and other significant information considered by the Department" and information submitted during the comment period by the person seeking judicial review that MDE did not consider. Again, this provision conflicts with title V and EPA rules by effectively allowing MDE to ignore public comments. It also conflicts with EPA's interpretation of the Act as requiring states to provide the same opportunity for judicial review as is available in federal court. Under federal law, the record includes all public comments and other material before the agency at the time of decision it is not limited to material presented by the person who is appealing. The State's rule would allow MDE to ignore not only information submitted by other commenters, but also by

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[2]Access EPA Region III's "Title V Operating Permits Database - Deadlines for Public Petitions to the Administrator for Permit Objections" website at www.epa.gov/reg3artd/permitting/petitions2.htm. and "Maryland Final Title V Permits Issued" website at www.epa.gov/reg3artd/permitting/maryland2.htm. Please note that the purpose of the first website is to provide information regarding deadlines for petitions to the EPA Administrator and not for actions for judicial review in Maryland court pursuant to COMAR 26.11.03.12(D). However, both websites provide data relevant to calculating Maryland's 90-day appeal deadline.

the permit applicant, and then claim it is not part of the record for judicial review. Such a result unlawfully diminishes the right of judicial review that title V requires states to provide to commenters.

EPA Response to Comment 14C: The comment applies specifically to COMAR 26.11.03.12E(2), which provides:

> For cases involving judicial review of the final decision regarding a part 70 permit in a case that is not a contested case, the record for judicial review shall consist of those records and other significant information considered by the Department when it decided whether to issue or deny the permit or, for the cases in which it is alleged that the Department has failed to make a timely decision, the information before the Department regarding the pending application. Except in cases that are based on new grounds provided for in §§ D(4) of this regulation, the record also consists of information submitted to the Department during the period to consider the permit by the person seeking judicial review, but that the Department did not consider. In cases that arise because of new grounds, the record includes the new grounds.

Neither the CAA nor part 70 specifies the materials that must be included in the record for judicial review of a part 70 permit decision. COMAR 26.11.03.12E(2) expressly does not require comments from anyone other than the petitioner be included in the docket, unless, those comments were "records and other significant information considered by the Department. . . ." However, it is MDE's practice to consider all public comments that are germane to title V and its implementing regulations and to place all such comments into the record for judicial review. MDE has provided a written commitment to continue this practice. See Attachment 5. In addition, the State's Attorney General's office has provided an affirmative statement that Maryland's laws provide legal authority to consider all comments received on a pending title V permit. See Attachment 4. Neither COMAR 26.11.03.12E(2) nor MDE's implementation of this provision offends the requirements enacted by Congress in the CAA or in EPA's regulations promulgated thereunder.

Comment 15A: COMAR 26.11.03.16B(2)(b) and (c) allow sources to treat as "minor" modifications the elimination of requirements rendered "meaningless" because the emissions to which they apply no longer occur. This provision is contrary to title V and EPA rules, which do not allow minor modifications on this ground. This is not merely a technical deficiency. A source may claim that regulated emissions have ceased, but that neither assures that they have in fact stopped nor that they will not recur. Members of the public may well want to comment on these issues, particularly where the emissions at issues have been substantial in the past and present serious health threats. The issue of whether emission limits have become "meaningless" is therefore not always a simple one, and certainly not one suitable for a minor modification.

EPA Response to Comment 15A: Federal regulations under 40 CFR § 70.7(e)(2)(i)(A)(2) allow the use of minor modification procedures when the proposed changes "[d]o not involve significant changes to existing monitoring, reporting or record keeping requirements in the

permit." Maryland regulations at COMAR 26.11.03.16B(2)(b) provide that a minor permit modification is a part 70 permit revision that "does not significantly revise existing federally enforceable monitoring, including test methods, reporting, record keeping, or compliance certification requirements except by eliminating the requirements if they are rendered meaningless because the only emissions to which the requirements apply will no longer occur." The elimination of existing monitoring could be considered a minor permit modification if the monitoring requirements are rendered meaningless because the emissions to which they apply are no longer occurring and will not occur in the future. Such a revision meets all of the criteria of a minor permit modification found in 40 CFR § 70.7(e)(2)(i)(A).

The commenter also expresses concern that emissions may continue despite a source's claim that they have stopped. Maryland's regulations lay out the criteria for both minor and significant modifications at COMAR 26.11.03.16 and 17. All applications must carry a certification of truth, accuracy, and completeness signed by a responsible official of the facility as required by COMAR 26.11.03.16D(3). As a result, any facility which seeks to eliminate monitoring requirements from its permit consistent with COMAR 26.11.03.16B(2)(b), but continues to produce emissions in violation of its application or permit is acting illegally and potentially would be subject to enforcement action.

Comment 15B: The same COMAR section allows "minor" modifications to change from one approved test method to another approved method. Again, title V and EPA rules do not allow minor modifications on this ground. The choice of a monitoring method is often critical to the stringency of an emission limit, and a change can amount to a significant permit relaxation. For example, both continuous opacity monitors and EPA Method 9 are "approved" methods for measuring opacity, but the former is often much more likely to detect violations, particularly when emissions occur after dark.

EPA Response to Comment 15B: EPA believes that the Maryland regulation found at COMAR 26.11.03.16B(2)(c) is consistent with federal regulations. Federal regulations found at 40 CFR § 70.7(e)(2)(i)(A)(2) provide for minor modification procedures when the proposed changes "[d]o not involve significant changes to existing monitoring, reporting or record keeping requirements in the permit." Maryland's regulations at COMAR 26.11.03.16B(2)(c) provide that a minor permit modification is a part 70 permit revision that "does not significantly revise existing federally enforceable monitoring, including test methods, reporting, record keeping, or compliance certification requirements except by changing from one approved method for a pollutant and source category to another." EPA believes that revising a permit to include one test method versus another could be considered a minor permit modification as long as the test methods have been approved by EPA, are appropriate for the emission source and pollutant, and meet the criteria for a minor permit modification in 40 CFR § 70.7(e)(2)(i)(A).

The example provided by the commenter indicates that the State might be able to switch from continuous opacity monitoring to EPA Method 9 through the minor permit modification process. COMAR 26.11.03.16B(2)(c) would not allow for this change because continuous opacity monitoring is a compliance monitoring methodology and not a compliance test method.

A more appropriate illustration of the intent of the regulations would be allowing a facility to switch from Method 6 to 6A for measuring sulfur dioxide. Method 6A is approved by EPA as an alternative to Method 6 for any application. Accordingly, under the Maryland regulation, if a permit contained Method 6, it could be revised through the minor modification process to contain Method 6A instead. A compendium of EPA-approved test methods are contained in Appendix A of 40 CFR part 60, Appendix B of 40 CFR part 61 and Appendix A of CFR part 63.[3] The EPA-approved alternative test methods to the test methods listed in 40 CFR parts 60, 61, and 63 are listed on EPA's Emission Measurement Center website at http://www.epa.gov/ttn/emc/tmethods.html.

Comment 16: COMAR 26.11.03.17F allows a source to make a significant change up to a year before submitting an application for a permit modification for the change, unless the change is prohibited by the part 70 permit. This provision conflicts with title V and EPA rules, which require sources to obtain final permit modifications before making significant changes.

EPA Response to Comment 16: This regulation was identified by EPA as a interim approval deficiency. In response to EPA's comments, MDE has revised its regulations since the commenter reviewed and commented on Maryland's part 70 regulations. The new regulations were proposed by MDE in the Maryland Register on April 20, 2001(28:8 Md. R. 799-803) and on June 8, 2001, MDE adopted the amendments to the regulations with an effective date of July 9, 2001. On September 10, 2002, EPA proposed to approve this regulation change in the Federal Register. See 67 FR 57496. EPA encourages you to review the proposed rulemaking and provide any comments, if warranted, by October 10, 2002.

Comment 17: COMAR 26.11.03.18A allows an operational flexibility change without a permit revision "although the change would otherwise violate the federally enforceable conditions of the part 70 permit." This provision conflicts with title V and EPA rules, which do not allow such changes if they would violate applicable requirements.

EPA Response to Comment 17: EPA agrees with your comment and informed MDE of this deficiency in its regulations. MDE has revised its regulation by deleting the phrase "although the change would otherwise violate the federally enforceable conditions of the part 70 permit," found at COMAR 26.11.03.18A. The regulation change was proposed for adoption in 28:19 Maryland Register 1734-1735 on September 21, 2001. The regulation was adopted as proposed in 28:24 Maryland Register on November 30, 2001. The effective date of the regulation change is December 10, 2001. On September 10, 2002, EPA proposed to approve this regulation change in the Federal Register. See 67 FR 57496. EPA encourages you to review the proposed rulemaking and provide any comments, if warranted, by October 10, 2002.

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[3]The EPA-approved alternative test methods to the test methods listed in 40 CFR parts 60, 61, and 63 are listed on EPA's Emission Measurement Center website at www.epa.gov/ttn/emc/tmethods.html.

Comment 18: In its title V permits, MDE does not always include applicable VOC RACT requirements for all emission units subject to such requirements. Under the Clean Air Act and the Maryland SIP, an existing facility that is a major emitter of VOCs is subject to VOC RACT requirements. The Maryland SIP has a "generic" RACT requirement for activities that are not subject to a specific RACT regulation. COMAR 26.11.09.02G(2). Despite this, Maryland does not include the generic RACT requirement for emission units that it deems insignificant or where other units at the facility are covered by a specific RACT rule. For example, in the Citgo permit, MDE failed to specify any RACT requirements for several very large storage tanks for jet fuel and distillates one of which holds approximately 8 million gallons. Other tanks at the facility are subject to a specific RACT rule for storage of other types of fuel (COMAR 26.11.13.03), and MDE apparently takes the position that the existence of that rule waives the requirement for generic RACT as to all units not covered by the rule. However, the same permit does require generic RACT for all new units at the facility that are not subject to an established RACT standard. Therefore, MDE cannot rationally claim that the existence of an established RACT for some units at a facility automatically ousts generic RACT as to all units not covered by the established RACT. The failure to specify RACT for tanks of this size in a severe ozone nonattainment area is a major program deficiency. See also EPA Region 3 comments on the Citgo permit, and MDE response dated 4/30/99.

EPA Response to Comment 18: EPA agrees with the comment that Maryland must include all applicable requirements into a title V permit. EPA disagrees with your interpretation of COMAR 26.11.19.02G(2). This regulation applies "to a person who owns or operates any major stationary source of VOC that is not subject to any VOC emissions standard in COMAR 26.11.11, 26.11.13 or Regulations of .03 -.15 of this chapter." All major sources of VOC at the Citgo facility are subject to COMAR 26.11.13 and, therefore, are not subject to COMAR 26.11.19.02G(2). COMAR 26.11.19.02G(2) is designed to develop case-by-case RACT for any major source of VOC that is not covered by another VOC RACT standard. It is not designed to develop case-by- case RACT for each small VOC source at a major facility that is not being controlled by an emissions standard under COMAR 26.11.11, 26.11.13 or 26.11.19.03 -15.

Maryland did include in the Citgo permit under the "State only enforceable Section," COMAR 26.11.19.02G(2) for all new units that may be built in the future at the facility. EPA interprets this permit condition to apply to any future major stationary source of VOC that is not subject to any VOC emissions standard in COMAR 26.11.11, 26.11.13 or 26.11.19.03 -15. Generally, EPA would not expect a title V permit to include requirements that may or may not become applicable at some future date. Title V permits are required to include only current applicable requirements, not potential future requirements. However, part 70 does not prohibit the inclusion of future applicable requirements, therefore, EPA does not consider the inclusion of COMAR 26.11.19.02G(2) a problem. EPA is concerned that COMAR 26.11.19.02G(2) was included in the "State only enforceable Section" of the permit. COMAR 26.11.19.02G(2) has been granted limited approval in the State Implementation Plan, thus the requirement should be in the federally enforceable section of the permit. See 40 CFR § 52.1070(c)(135) and 63 FR 47179 (Sept. 4, 1998). However, there are no units currently in place at the facility to which the requirement applies, and the requirement is more informational than substantive. When and if

new units are constructed, the part 70 permit will be modified to include any preconstruction permit terms that result from the application of the case-by-case VOC RACT requirement. When that modification is made, the part 70 permit must list any RACT requirement as federally enforceable. Therefore, the inclusion of COMAR 26.11.19.02G(2) in the "State only enforceable Section," does not represent a problem for this particular permit. Further, MDE has been informed that requirements from COMAR 26.11.19.02G(2) for all future VOC sources must be included in the federally enforceable section of the permit. If MDE regains authority to issue part 70 permits, EPA will monitor MDE's permits for compliance with this requirement.

Attachment 1: AIRS Quick Look Milestone Report, MDE State Enforcement Actions 10/01/01 - 7/30/02, dated August 1, 2002

Attachment 2: Letter from F. Courtright. Manager, Maryland Department of Environment to G. Valls, USEPA Region III, dated April 29, 2002

Attachment 3: Memo from D. Mummert, Maryland Department of Environment to Karen Irons Maryland Department of Environment, dated July 1,2002

Attachment 4: Supplemental Opinion of the Maryland Attorney General, from J. Curran, Jr., Attorney General of Maryland, dated May 29, 2002

Attachment 5: Letter from M. Zaw-Mon, Acting Secretary, Maryland Department of Environment to D. Welsh, Regional Administrator, USEPA Region III, dated July 16, 2002

Attachment 6: Title V Program Cost (Revenues v. Expenditures), dated July 2001

Attachment 1

AIRS FACILITY SUBSYSTEM QUICK LOOK MILESTONE REPORT
MD STATE ENFORCEMENT ACTIONS ACHIEVED FROM 10/l/O1 TO 7/30/02
SENSITIVE AND DRAFT SIP DATA INCLUDED

DATE: 08/01/02

ALL DATA

ACD1	TOTAL	SLAT A	SLA1 Al	SLAT A2	SLA1 SM	SLA1 B	SLA1 UK	SLA1 C
CRT REV BY STTE	116	109	0	0	0	7	0	0
FCE/ONSITE-ST	485	277	0	0	43	164	1	0
INSPEC VAPOR 1	4	0	0	0	0	4	0_	0
INSPEC VAPOR 2	315	0	0	0	0	315	0	0
NTFICATION RECD	13	5	0	0	0	8	0	0
ST ADM CNSNT 0	14	9	0	0	1	4	0	0
ST ADMIN ORDER	16	12	0	0	2	2	0	0
ST CIVIL PEN	31	6	0	0	4	21	0	0
ST CRT CNSNT DE	4	4	0	0	0	0	0	0
ST CVL PEN PD	46	19	0	0	5	22	0	0
ST OB STKTST	66	52	0	0	8	6	0	0
STATE DAY ZERO	29	29	0	0	0	0	0	0
STATE NOV	268	114	0	0	10	144	0	0
	1407	636	0	0	73	697	1	0

0#t ITEMS: 13

MDE.

MARYLAND DEPARTMENT OF THE ENVIRONMENT
2500 Broening Highway *Baltimore; Maryland 21224
(410) 631-3000 e 1-800-633-6101 • http:H www. mde. state. md. us

Parris N. Glendening
Governor

Merrylin Zaw-Mon
Acting Secretary

April 29, 2002

Ms. rerallyn Valls
Air Protection Division (3AP10)
U.S. EPA, Region III
1650 Arch Street
Philadelphia PA 19103-2029

This will satisfy Maryland's federal FY 2002 grant commitment to supply a semiannual report (October 2001-March 2002) regarding air quality compliance and enforcement activity to EPA Region III. It should be noted that the majority of the information required by the grant to be included in this report can be obtained directly from AFS.

- Maryland reports air quality compliance/enforcement data, along with that of other media, in its annual Maryland Department of the Environment Enforcement and Compliance Report. This report tracks inspections, enforcement actions, compliance rates, etc. and is available on MDE's website (http://www.mde.state. md.us/). This data is collected and reported on a state fiscal year basis. Maryland's fiscal year runs from July 1 to June 30. Enclosed is cumulative data for state fiscal year 2002 thru Maryland's third quarter (July 2001- March 2002). This includes inspections, enforcement actions, compliance rates, etc. This information is also available in AFS except for compliance rates.

- High Priority Violators identified. Enclosed is a list of HPVs identified by Maryland in the first half of federal fiscal year 2002 (October 2001-March 2002).

- Stack Test Audit report generated from AFS with information regarding stack testing - enclosed.

- The settlement agreement in Maryland's MACT enforcement action against Kaydon Ring and Seal contained two SEP projects. The final settlement contained a $50,000 civil penalty and two SEPs valued at a combined $198,000. A copy of the settlement agreement is enclosed.

- No Title 5 annual compliance certifications were reviewed during this time period. Under Maryland Title 5 regulations, annual compliance certifications are due April 1 for the previous calendar year.

- Maryland expects to meet its 2-yr inspection commitments.

- Maryland is finding a high degree of non-compliance at MACT area sources. The non-compliances are typically for monitoring and record-keeping violations. For drycleaners specifically, there is a 40% non-compliance rate, primarily for monitoring and record-keeping violations.

If you have any questions, please call me at 410-631-3241.

Sincerely,

Frank Courtright, Manager
Air Quality Compliance Program
Air and Radiation Management Administration

BFC:cld

Enclosures

cc: Ann Marie DeBiase
Angelo Bianca
Laramie Daniel

MDE/ARMA - Air Quality Compliance Program
State FY 2002 Enforcement and Compliance Report

HIGH IMPACT FACILITIES	July 01-Mar 02 3rd Q FY 2002
PERMITTED SITES/FACILITIES	
Totals	
No. of Permits/Licenses issued	575
No. of Permits/Licenses in effect at FY end	232 3394
OTHER REGULATED SITES/FACILITIES	
None	N/A
INSPECTIONS	
No. of Sites Inspected}	344
No. of Inspections, Audits, Spot checks	1145
COMPLIANCE PROFILE	
No. of Inspected Sites/Facilities with Significant Violations	24
% of Inspected Sites/Facilities in Significant Compliance	93%
of Inspected Sites/Facilities with Significant Violations	7%
SIGNIFICANT VIOLATIONS	
No. of Significant Violations involving Environmental/Health Impact	8
No. of Significant Violations based on Technical/Preventative Deficiencies	33
No. of Significant Violations carried over from previous FY	7
Total	48
DISPOSITION OF SIGNIFICANT VIOLATIONS	
Resolved	18
Ongoing	30
ENFORCEMENT ACTIONS	
No. of Compliance Assistance rendered	62
No. of Show Cause, Remedial, Corrective Actions Issued	8
No. of Stop Work Orders	0
No. of Injunctions Obtained	0
No. of Penalty & Other Enforcement Actions	23
No. of Referrals to Attorney General for possible Criminal Action	0
PENALTIES	
Amount of Administrative or Civil Penalties obtained	$197,334.00

MDE/ARMA - Air Quality Compliance Program
State FY 2002 Enforcement and Compliance Report

LOW IMPACT FACILITIES	July 01- Mar 02 3rd Q FY 2002
PERMITTED SITES/FACILITIES	
Totals	10,432
No. of Permits/Licenses' issued	388
No. of Permits/Licenses in effect at FY end	17,024
OTHER REGULATED SITES/FACILITIES	
None	N/A
INSPECTIONS	
No. of Sites Inspected	615
No. of Inspections, Audits, Spot checks	799'
COMPLIANCE PROFILE	
No. of Inspected Sites/Facilities with Significant Violations	17
of Inspected Sites/Facilities in Significant Compliance	97%
of Inspected Sites/Facilities with Significant Violations	3%
SIGNIFICANT VIOLATIONS	
No. of Significant Violations involving Environmental/Health Impact	16
No. of Significant Violations based on Technical/Preventative Deficiencies	13
No. of Significant Violations carried over from previous FY	6
Total	35
DISPOSITION OF SIGNIFICANT VIOLATIONS	
Resolved	3
Ongoing	32
ENFORCEMENT ACTIONS	
No. of Compliance Assistance rendered	152
No. of Show Cause, Remedial, Corrective Actions Issued	7
No. of Stop Work Orders	
No. of Injunctions Obtained-	
No. of Penalty & Other Enforcement Actions	23
No. of Referrals to Attorney General for possible Criminal Action	0
PENALTIES	
Amount of Administrative or Civil Penalties obtained	$4,850.00

MDE/ARMA - Air Quality Compliance Program
STATE FY 2002 Enforcement & Compliance Report

Air Quality Complaints	July 01-Mar 02 3rd Q FY 2002
PERMITTED SITES/FACILITIES	
No. of Permits/Licenses issued	N/A
No. of Permits/Licenses in effect at FY end	N/A
OTHER REGULATED SITESIFACILITIES	
Complaints received at all sites	767
Complaints received at unregistered/unpermitted sites	549
INSPECTIONS	
No. of Sites Inspected	264
No. of Inspections, Audits, Spot checks	485
COMPLIANCE PROFILE	
No. of Inspected Sites/Facilities with Significant Violations	42
of Inspected Sites/Facilities in Significant Compliance	84%
of Inspected Sites/Facilities with Significant Violations	16%
SIGNIFICANT VIOLATIONS	
No. of Significant Violations involving Environmental/Health Impact	54
No. of Significant Violations based on Technical/Preventative Deficiencies	2
No. of Significant Violations carried over from previous FY	21
Total	77
DISPOSITION OF SIGNIFICANT VIOLATIONS	
Resolved	45
Ongoing	32
ENFORCEMENT ACTIONS	
No. of Compliance Assistance rendered	59
No. of Show Cause, Remedial, Corrective Actions Issued	1
No. of Stop Work Orders	0
No. of Injunctions Obtained	0
No. of Penalty & Other Enforcement Actions	7
No. of Referrals to Attorney General for possible Criminal Action	0
PENALTIES	
Amount of Administrative or Civil Penalties obtained	$17,700.00

MARYLAND HPVs IDENTIFIED

OCTOBER 2001 - MARCH 2002

DATEIDED	AFS NUMBER	SOURCENAME
11/29/2001	510-01986	TNEMEC
11/29/2001	510-00001	JOHNS HOPKINS UNIVERSITY HOSPITAL
11/29/2001	021-00005	ALCOA EASTALCO
11/29/2001	031-00323	NATIONAL INSTITUTES OF STANDARDS
11/29/2001	027-00052	MD-VA MILK PRODUCERS
11/29/2001	013-00012	LEHIGH PORTLAND-UNION BRIDGE
03/22/2002	021-00254	CANAM STEEL
03/22/2002	043-00216	PHOENIX COLOR
03/22/2002	045-00121	PLYMOUTH TUBE
03/22/2002	005-00384	SCHLUMBERGER MALCO PLASTICS
03/22/2002	005-00332	BALTIMORE MARINE INDUSTRIES
03/22/2002	045-00156	ST SERVICES-SALISBURY
03/22/2002	005-01149	GAMSE LITHOGRAPHING
03/22/2002	510-00121	UNILEVER
03/22/2002	510-00109	MILLENNIUM

Broening Highway • Baltimore ~lD ? l 22-1
(-110) 631-3265

Attachment 3

Parris N. Glendening
Governor

Jane T. Nishida
Secretary

TO: Karen Irons

FROM: **Dave Mummert** ~

DATE: July l , 2002

SUBJECT: Search for Use of Steam Engines in Maryland

I **contacted the Maryland Cooperative Extension ("MCE") system for assistance in ascertaining whether any steam engines are still in use on farms in Maryland. The MCE'is a system within the college of Agriculture and Natural Resources of the University of Maryland that provides technical expertise and facilitates technology transfer to farmers and the general public. The main office is located at the University of Maryland, College Park and there are local offices in each of Maryland's 23 counties and Baltimore City. The employees of MCE have a general knowledge of agricultural operations in the state through the various outreach programs and assistance they provide to the farm community. Many of the county MCE staff have farm backgrounds and have lived in their counties for numerous years. The MCE employees are knowledgeable about the use of steam engines on farms in Maryland both for farm and domestic purposes.**

I **first contacted Dr. Wes Musser (professor and extension specialist, farm management) in the college of Agricultural and Natural Resources at the University of Maryland, College Park in December 2001.** Dr. **Musser stated to me that he had not seen or heard of steam engines still in use on farms in Maryland.** Dr. **Musser sent an e-mail to all the county MCE offices with a message to send me any information that they may have on the use of steam engines in Maryland. A few county MCE agents responded that they were not aware of any steam engines in use for farm and domestic purposes. However, an agent in Prince George's County stated that he had heard about Amish and Mennonite communities in southern Maryland that may still operate steam engines. I followed up on my conversation with the P.G. County agent by contacting Mr. Ben Beale, the MCE agent in St. Mary's County, the southern Maryland County in which there are Amish farmers.** Mr. **Beale clarified that the Amish farmers in St. Mary's County no longer use steam engines on their farms.**

In **addition, in order to eliminate any doubt about the use of steam engines, in June 2002, a member of my staff and I individually surveyed all the MCE county offices. We contacted the county agents by telephone and e-mail. The results of our survey confirmed that there are no steam engines in use for farm and domestic purposes in Maryland. Steam engines are now obsolete for modern agricultural operations and only operated for demonstrations of historical farm equipment.**

"Together We Can Clean Up"

Attached to this memorandum are copies of the email responses that were received from the agents with the Maryland Cooperative Service from the counties in Maryland.

From: Wes Musser <wmusser@arec.umd.edu>
To: "Ag & Natural Resource Agents" <agnr-ag-agents@umail.umd.edu>
Date: 12/14/01 11:55AM
Subject: Fw: Steam engines on Maryland farms

If you have any info, please respond to Dave as I have not seen or heard about steam enginees on farms for a while--Wes.

----- Original Message ---
From: Dave Mummert <dmummert@mde.state.md.us>
To: <Jhanson@arec.umd.edu>; <Wmusser@arec.umd.edu>
Cc: <kirons@mde.state.md.us>
Sent: Monday, December 10, 2001 10:10 AM
Subject: Steam engines on Maryland farms

Hello Dr. Hanson, and Dr. Musser,

I am looking for some information to support a claim that the Maryland Department of the Environment, Air Quality Permits Program has made to the Environmental Protection Agency Region 111. We told the EPA there are no boilers used exclusively to operate steam engines for farm use in Maryland.

Let me give you a brief backround on the issue. Maryland's environmental laws provide for an exception to the requirement to obtain air quality permits for "boilers used exclusively to operate steam engines for farm use". A person has commented on this exception in regards to our Department's Part 70(Title V) federal operating program. The commentor stated that this exception is not allowed under the Clean Air Act's Title V requirements.

The Department told the EPA that this issue is irrelevent by the fact that there are no steam engines in farm use at this time. I am only aware of steam engines in farm museums.

I would like to use your names as experts on the subject of farm machinery that is currently being used on farms in Maryland to support the Department's claim. Your response would be added to the Department's response to the EPA on this issue.

EPA is anxiously awaiting support to our reponse. I would greatly appreciate your assistance with this matter. Thank you.

Dave Mummert
Division Chief, Technical Support
Air Quality Permits Program

CC: <dmummert@mde.state.md.us>, "Jim Hanson" <jhanson@arec.umd.edu>

From: "William H. Knepp" <wk34,@umail.umd.edu>
To: Mitchell Fischler <mfischler@mde.state.md.us>
Date: 6/10/02 1:18PM
Subject: Request for asistance concerning steam engines on farms

Hi Mitchell:

There are no steam engines used in farming operations to my knowledge in Allegany co MD. Also, there are no Amish communities in Allegany co.

I have been employed as the Extension Educator, Agriculture & Naturat Resources for nearly 2.5 years. I work mostly with beef producers, Mt. Fresh Growers and homeowners.

William H. Knepp
Extension Educator, Agriculture and Natural Resources

On Mon, 10 Jun 2002 12:32:16 -0400 Mitchell Fischler <mfischler@mde.state.md.us> wrote:

> Hello Bill:

> Thank you for the time you spent with me over the telephone earlier
> today.

> In followup to our telephone conversation, MOE is requesting your
> assistance in determining whether there are steam engines being used for
> farm and domestic use in your county. In addition, we are interested in
> knowing whether there are any Amish communities within your county.

> Please return an email to me with your responses that are the best to
> your knowledge. Also, please provide your full name, your official
> position within the extension service, and describe your background and
> familiarity with farming operations in your county.

> We will be sharing your responses with the Environmental Protection
> Agency to support the Department's efforts to verify the status of the
> use of steam engines on farms in Maryland.

> If you can refer us to other persons that may have useful information,
> please include their names and phone numbers.

> The Department is truly appreciative of you taking the time to respond
> to our request. Thank you.

> Regards,

From: David Myers <dm223@umail.umd.edu>
To: Dave Mummert <dmummert@mde..state.md.us>
Date: B/13/0211:48AM
Subject: Re: Steam engines in Anne Arundel and P.G. Counties

Mr. Dave Mummert,

I am not aware of any steam engines actively engaged in farming activities in either Anne Arundel or Prince George's Counties. I serve both of these counties as an Agriculture, Extension Educator for the University of Maryland Cooperative Extension. I have been a lifelong resident of Anne Arundel County, and previously dairy farmed full-time for eig--1teen years in the county prior to being employed by Maryland Cooperative Extension. In the past there have been on occasion agricultural historic shows that involved the display of steam engines both static and operating. These steam engines were owned and operated by private collectors, and have not participated in Anne Arundel and Prince George's Counties public agricultural shows for many years.

Please feel free to contact me if ant additional questions arise.

Sincerely,

R. David Myers
University of Maryland Cooperative Extension
Area Extension Educator,
Agriculture and Natural Resources

On Thu, 13 Jun 2002 10:35:39 -0400 Dave Mummert <dmummert@mde.state.md.us> wrote:

> Dave,

> In followup to our telephone conversation, MDE is requesting your
> assistance in determining whether there are steam engines being used for
• farm and domestic use in Anne Arundel or Prince George's Counties.
> Also, to the best of your knowledge, are you aware of any Amish farm
> communities in the two counties?

> Please return an email to me with your responses. Also, please provide
> your full name, your official position within the extension service, and
> describe your background and familiarity with farming operations in A.A.
> and P.G. County.

> We will be sharing your responses with the Environmental Protection
> Agency to support the Department's efforts to verify the status of steam
> engines on farms in Maryland.

> The Department is truly appreciative of you taking time to respond to

From: Dave Martin <dm64@umail.umd.edu>
To: Mitchell Fischler <mfischler@mde.state.md.us>
Date: -6/10/02 3:23PM
Subject: Request for assistance regarding steam engines on farms

June 10, 2002

TO: Mitchell Fischler, P.E.
MOE

FROM: David A. Martin
Extension Educator - Agricultural Science
Maryland Cooperative Extension - Baltimore Co.

RE: Steam Engines On Farms

I have received your request for information concerning the use of steam engines on farms, other agricultural uses or domestic uses in Baltimore County. My response is based on my 14 years with Maryland Cooperative Extension working with the agricultural community (nine of which have been as Extension Educator working with commercial agriculture in Baltimore Co.) and as a resident of Baltimore County for 25 years.

I am not aware of any steam engines used for agricultural or domestic purposes in Baltimore Co. during my work or residence in the county. The only uses of steam engines I am aware of are for historical or hobby purposes associated with occasional reenactments.

You also inquired about Amish communities. There are no Amish farms or communities in the county.

If you need additional information, please feel free to contact me.

CC: "Bosmans, Ray" <rb37@umail.umd.edu>, "Tjaden, Robert' <rt20@umail.umd.edu>

From: James Lewis <jl139@umail.umd.edu>
To: Dave Mummert <dmummert@mde.state.md.us>
Date: 6112/02 5:04PM
Subject: Re: Steam engines in Caroline County

To the best of my knowledge, there are no steam engines being used commercially on farms in caroline county. the only ones used are at a steam and gas show that is held annually in the summertime. there are no amish farmers in caroline county.
I have been the county ag agent for 10 years and farmed in the county for 10 years prior to that. good luck

Dave I.'ummert wrote:

> James,

> In followup to our telephone conversation, MOE is requesting your
> assistance in determining whether there are steam engines being used for
> farm and domestic use in your County. Also, to the best of your
> knowledge, are you aware of any Amish farm communities in Caroline
> County?

> Please return an email to me with your responses. Also, please provide
> your full name, your official position within the extension service, and
> describe your background and familiarity with farming operations in.
> Caroline County.

> We will be sharing your responses with the Environmental Protection
> Agency to support the Department's efforts to verify the status of steam
> engines on farms in Maryland.

> The Department is truly appreciative of you taking time to respond to
> our request. Thank you.

> Dave Mummert
> Chief, Technical Support Division
> Air Quality Permits Program
> Maryland Department of the Environment
> 410-631-3206

From: bryan butler <bbl 13@umail.umd.edu>
To: Mitchell Fischler <mfischler@mde.state.md.us>
Date: 6/10/02 1:59PM
Subject: Re: Request for assstance concerning steam engines on farms

Mitchell,
As I mentioned during our phone conversation I am not aware of any production farms using stream engines in their production systems.
Also, as I mentioned we do not have any Amish farms that I am aware of in Carroll County. But, I know there are Amish Communities in St. Mary's and Garrett Counties in Maryland.
I hope this helps.
RegaMs,
Bryan Butler
Mitchell Fischler wrote:

> Hello Bryan:

> Thank you for the time you spent with me over the telephone earlier
> today.
>
> In followup to our telephone conversation, MOE is requesting your
> assistance in determining whether there are steam engines being used for
> farm and domestic use in your county. In addition, we are interested in
> knowing whether there are any Amish communities within your county.
>
> Please return an email to me with your responses that are the best to
> your knowledge. Also, please provide your full name, your official
> position within the extension service, and describe your background and
> familiarity with farming operations in your county.

> We will be sharing your responses with the Environmental Protection
> Agency to support the Department's efforts to verify the status of the
> use of steam engines on farms in Maryland.

> If you can refer us to other persons that may have useful information,
> please include their names and phone numbers.

> The Department is truly appreciative of you taking the time to respond
> to our request. Thank you.

> Regards,

> Mitchell Fischler, P.E.
> Public Health Engineer
> Air Quality Permits Program
> (410) 631-3160

From: "Scott W. Rowe" <sr181 @umail.umd.edu>
To: <dmummert@mde.state.md.us>
Date: 12/17/01 8: 04AM
Subject: Steam Engine Use

Dave

I am not aware of any use of steam engines for day-to-day farm operations in Cecil County. The only use I know of is for demonstration of antique steam tractors at the Cecil County Fair and special field days such as those sponsored by the Cecil County Ag Museum.

Scott <owe
Extension Educator, Ag and Natural Resources
Cecil County

CC: <wmusser@arec.umd.edu>

From: "Betsy Gallagher" <lg2@umail.umd.edu>
To: "Dave Mummert" <dmummert@mde.state.md.us>
Date: Tue, Jun 11, 2002 12:25 PM
Subject: Re: Steam engines in Dorchester County

Dave:

To the best of my knowledge there are no steam engines being used for farm or domestic use in Dorchester County, Maryland. There are also no Amish or Mennonite farm communities in Dorchester County, Maryland, to the best of my knowledge.

I am an Extension Educator, Agricultural Science, University of Maryland Cooperative Extension, Dorchester County, Maryland and have served in this position for 25 years as of July 1, 2002. I have worked with commercial agricultural operations during my tenure in this position.

Lavelette E. (Betsy) Gallagher, Extension Educator, Agricultural Science

--- Original Message --
From: Dave Mummert <dmummert@mde.state.md.us>
To: <lg2@umail.umd.edu>
Sent: Tuesday, June 11, 2002 9:42 AM
Subject: Steam engines in Dorchester County

> Betsy,

> In followup to our telephone conversation, MDE is requesting your
> assistance in determining whether there are steam engines being used for
> farm and domestic use in your County. Also, to the best of your
> knowledge, are you aware of any Amish farm communities in Dorchester
> County?

> Please return an email to me with your responses. Also, please provide
> your full name, your official position within the extension service, and
> describe your background and familiarity with farming operations in
> Wicomico County.

> We will be sharing your responses with the Environmental Protection
> Agency to support the Department's efforts to verify the status of steam
> engines on farms in Maryland.-

> The Department is truly appreciative of you taking time to respond to
> our request. Thank you.

> Dave Mummert
> Chief, Technical Support Division
> Air Quality Permits Program
> Maryland Department of the Environment
> 410-631-3206

From: "Terry E. Poole" <tp8@umail.umd.edu>
To: Mitchell Fischler <mfischler@mde.state.md.us>
Date: 6/10/02 1:03PM
Subject: Request for assitance concerning steam engines on farms

Dear Mr. Fischler:

This note is in response to your request on June 10, 2002 concerning the approximate number of steam engines in use on farms in Frederick County. My response is, to the best of my knowledge, there are no active steam engines on any farms in Frederick County, MD. In response to your question about Amish communities, I do not know of any Amish communities in Frederick County.

I am an Extension Agent, Agricultural Science, with Maryland Cooperative Extension, Frederick County Office. I have been in this position for 23 years.-

On Mon, 10 Jun 2002 12:43:52 -0400 Mitchell Fischler <mfischler@mde.state.md.us> wrote:

> Hello Terry:

> Thank you for the time you spent with me over the telephone earlier
> today.

> In followup to our telephone conversation, MDE is requesting your
> assistance in determining whether there are steam engines being used for
> farm and'domestic use in your county. In addition, we are interested in
> knowing whether there are any Amish communities within your county.

> Please return an email to me with your responses that are the best to
> your knowledge. Also, please provide your full name, your official
> position within the extension service, and describe your background and
> familiarity with farming operations in your county.

> We will be sharing your responses with the Environmental Protection
> Agency to support the Departments efforts to verify the status of the
> use of steam engines on farms in Maryland.

> If you can refer us to other persons that may have useful information,
> please include their names and phone numbers.

> The Department is truly appreciative of you taking the time to respond
> to our request. Thank you.

> Regards,

> Mitchell Fischler, P.E.
> Public Health Engineer
> Air Quality Permits Program
> (410) 631-3160

From: "Jim Simms" <js63@umail.umd.edu>
To: "Mitchell Fischler" <mfischler@mde.state.md.us>
Date: 7/10/02 8:50AM
Subject: Re: Request for assistance regarding steam engines on farms

Hi Mitchell,

To the best of my knowledge there are no steam engines being used for farm and domestic use in Garrett County. We do have quite a few Amish Farmers; however, most of them have electricity and tractors. I know of three Amish families that still use horse power for farm work.

In reWd to the other request my name is James W. Simms, Extension Agent, Agriculture & Natural Resources, County Extension Director. I have worked in the Garrett County Agricultural Industry for the past 33-years.

Jim Simms
---- Original Message ----
From: "Mitchell Fischlee' <mfischler@mde.state.md.us>
To: <js63@umail.umd.edu>
Sent: Tuesday, July 02, 2002 3:07 PM
Subject: Request for assistance regarding steam engines on farms

> Hello James:

> In followup to your message, MDE is requesting your assistance in
> determining whether there are steam engines being used for farm and
> domestic use in your county. In addition, we are interested in knowing
> whether there are any Amish communities within your county.

> Please return an email to me with your responses that are the best to
> your knowledge. Also, please provide your full name, your official
> position within the extension service, and describe your background and
> familiarity with farming operations in your county.

> We will be sharing your responses with the Environmental Protection
> Agency to support the Department's efforts to verify the status of the
> use of steam engines on farms in Maryland.
>
> If you can refer us to other persons that may have useful information,
> please include their names and phone numbers.

> The Department is truly appreciative of you taking the time to respond
> to our request. Thank you.

> Regards,

> Mitchell Fischler, P.E.
> Public Health Engineer
> Air Quality Permits Program
> (410) 631-3160

>

From: Gary Davis <Gary.Davis@md.usda.gov>
To: Mitchell Fischler <mfischler@mde.state.md.us>
Date: 6/10102 3:53PM
Subject: Re: Request for assistance concernign steam engines on farms

Mr. Fischler:
Per your request the Harford Soil Conservation District has no knowledge of any steam engine use in Harford County, MD. We also do not to our knowledge have any Amish farms operating in the county.

Gary A. Davis
District Manager
Harford Soil Conservation District
19 Newoort Drive Suite 103
Forest Hill, MD. 21050

Mitchell Fischler wrote:

> Hello Gary:

> Thank you for the time you spent with me over the telephone earlier
> today.
>
> In followup to our telephone conversation, MDE is requesting your
> assistance in determining whether there are steam engines being used for
> farm and domestic use in your county. In addition, we are interested in
> knowing whether there are any Amish communities within your county.
>
> Please return an email to me with your responses that are the best to
> your knowledge. Also, please provide your full name, your official
> position within the extension service, and describe your background and
> familiarity with farming operations in your county.

> We will be sharing your responses with the Environmental Protection
> Agency to support the Department's efforts to verify the status of the
> use of steam engines on farms in Maryland.

> If you can refer us to other persons that may have useful information,
> please include their names and phone numbers.

> The Department is truly appreciative of you taking the time to respond
> to our request. Thank you.

> Regards,

> Mitchell Fischler, P.E.
> Public Health Engineer
> Air Quality Permits Program
> (410) 631-3160

From: "Caragh B. Fitzgerald" <cf8Cgumail.umd.edu>
To: Mitchell Fischler <mfischler@c mde.state.md.us>
Date: 7/9/02 8:20AM
Subject: Request for assistance regarding steam engines on farms

Hi Mitch--

To my knowledge, there are no steam engines being used for farm or domestic use in Howard County. The only steam engines that might be in use are for historic and demonstration purposes only. I also posed your questions at a recent meeting of the Howard Soil Conservation District (SCD), since that group includes various members of the ag community. The board members include farmers or members of farm families in their 50s, 60s, and 70s. The staff include ag support professionals who work with farmers, as I do. No one was aware of any steam engines being,used for farm or domestic use in the county. I do not know of any Amish communities in the county.

My official position is listed below. As the Educator for Ag and Natural Resources, I work with commercial farmers in the community. I would say that I am familiar with most of the commercial-scale operations in the county. I have been in the county with Cooperative Extension for almost 4 years.

If you would like to pursue this issue further, I would·suggest that you contact Phil Jones, President of the Howard County Farm Bureau at 410-442-2679. You should be aware, though, that a number of Farm Bureau board members also serve on the SCD board, and so you already have their input.

If I can be of any further assistance, please do not hesitate to contact me.

-Caragh

Caragh B. Fitzgerald
Extension Educator, Agriculture and Natural Resources
Maryland Cooperative Extension-Howard County
3525-L Ellicott Mills Dr.
Ellicott City, MD 21043
(410) 313-2710
(410) 313-2712 (Fax)
cf80@umail.umd.edu

On Tue, 02 Jul 2002 11:34:22 -0400 Mitchell Fischler <mfischler@mde.state. md.us> wrote:

> Hello Caragh:

> Thank you for the time you spent with me over the telephone on June
> 11th.

> In followup to our telephone conversation, MOE is requesting your
> assistance in determining whether there are steam engines being used for

From: "John E. Hall" <jh8@umail.umd.edu>
To: Dave Mummert <dmummert@mde:state.md.us>
Date: 5/12/02 2:18PM
Subject: Re: Steam engines in Kent County

Dave Mummert wrote:

> John,
>
> In followup to our telephone conversation, MDE is requesting your
> assistance in determining whether there are steam engines being used for
> farm and domestic use in your county. Also, to the best of your
> knowledge, are you aware of any Amish farm communities in Kent County?

I am not aware of any Steam engines that are in operation in Kent County

No. I am not aware of any amish farms in Kent County

>
> Please return an email to me with your responses. Also, please provide
> your full name, your official position within the extension service, and
> describe your background and familiarity with farming operations in Kent
> County.

> We will be sharing your responses with the Environmental Protection
> Agency to support the Department's efforts to verify the status of steam
> engines on farms in Maryland.

> The Department is truly appreciative of you taking time to respond to
> our request. Thank you.

> Dave Mummert
> Chief, Technical Support Division
> Air Quality Permits Program
> Maryland Department of the Environment
> 410-631-3206

John E. Hall, AgNR, CED
Email: jh8@umail.umd.edu
Phone: 410-778-1661 Fax:410-778-9075
Kent County Public Works Complex
709 Morgnec Rd., Ste. #202
Chestertown, MD 21620
U.S.A.

From: Dan Ludwig <d1159@umail.umd.edu>
To: Mitchell Fischler <mfischler@mde.state.md.us>
Date: 6/11/02 9:28AM
Subject: Re: Request for assistance concerning steam engines on farms

Mitch:

To the best of my knowledge there are no farms in Montgomery County, MD that use steam engines for production agriculture. In addition, to the best of my knowledge, there are no Amish communities in the county either.

As the Livestock Extension Educator, I make many farm visits to equine and livestcck producers and travel the county frequently.

Hope this helps.

Dan

Mitchell Fischler wrote:

> Hello Dan:

> Thank you for the time you spent with me over the telephone earlier
> today.

> In followup to our telephone conversation, MDE is requesting your
> assistance in determining whether there are steam engines being used for
> farm and domestic use in your county. In addition, we are interested in
> knowing whether there are any Amish communities within your county.

> Please return an email to me with your responses that are the best to
> your knowledge. Also, please provide your full name, your official
> position within the extension service, and describe your background and
> familiarity with farming operations in your county.

> We will be sharing your responses with the Environmental Protection
> Agency to support the Department's efforts to verify the status of the
> use of steam engines on farms in Maryland.

> If you can refer us to other persons that may have useful information,
> please include their names and phone numbers.

> The Department is truly appreciative of you taking the time to respond
> to our request. Thank you.

> Regards,

> Mitchell Fischler, P.E.
> Public Health Engineer
> Air Quality Permits Program
> (410) 631-3160

Dan Ludwig
Livestock Extension Educator
Montgomery County Cooperative Extension

From: Paul Gunther <pg24@umail.umd.edu>
To: Dave Mummert <dmummert@mde.state.md.us>
Date: 6/14/02 8:42AM
Subject: Re: Steam engines in Queen Anne's County

Dave, There are no steam engines in operation in Queen Anne's county! I have been in extension for over 28 years and only seen steam engines demonstrated at fairs and field days. Paul L. Gunther

Dave Mummert wrote:

> Paul,

> In foilowup to our telephone conversation, MDE is requesting your
> assistance in determining whether there are steam engines being used for
> farm and domestic use in your County. To the best of your knowledge,
> are you aware of any Amish farm communities in Queen Anne's County that
> may be using steam engines?

> Please return an email to me with your responses. Also, please provide
> your full name, your official position within the extension service, and
> describe your background and familiarity with farming operations in
> Queen Anne's County.

> We will be sharing your responses with the Environmental Protection
> Agency to support the Department's efforts to verify the status of steam
> engines on farms in Maryland.

> The Department is truly appreciative of you taking time to respond to
> our request. Thank you.

> Dave Mummert
> Chief, Technical Support Division
> Air Quality Permits Program
> Maryland Department of the Environment
> 410-631-3206

From: Pete Layfield <pl42@umail.umd.edu>
To: Dave Mummert <dmummert@mde.state.md.us>
Date: 6112/021:17PM
Subject: Re: Steam engines in Somerset County

Dave:

It is a pleasure to assist you in any way that I can.

To the best of my knowledge, there are no current steam engines operating in the county (Somerset), in any capacity.

Regarding your inquiry as to Amish families in the county, again, I would reply in the negative. There are, however, some Mennonite families in the area. If you need information in this regard, please let me know, and I will assist you.

In reference to my agricultural background: I am 52 years old and grew up on a small grain and livestock farm in Wicomico County. I have been employed with the University of Maryland Cooperative Extension as a Nutrient Management Consultant [license # 2030 / certification # 1099 J, working out of Somerset County for the last 11 years. In addition to my full time job with the university, I assist my father with his poultry operation in Wicomico County. Other than the 4 years that I was in the Air Force, I have always been involved in agriculture on the shore.

An additional footnote for you: My grandfather was a foreman for a steam sawmill in Wicomico County years before I was born, and I am indeed fortunate in having heard him recall many of his experiences with the sawmill (especially the steam engines).

Again, it is a pleasure to assist you in any way that I can.

Pete H. Layfield
Nutrient Management Advisor
Somerset County CES
License # 2030 / Certification # 1099

Dave Mummert wrote:

> Pete;

> In followup to our telephone conversation, MDE is requesting your
> assistance in determining whether there are steam engines being used for
> farm and domestic use in your County. Also, to the best of your
> knowledge, are you aware of any Amish farm communities in Somerset
> County?

> Please return an email to me with your responses. Also, please provide
> your full name, your official position within the extension service, and
> describe your background and familiarity with farming operations in
> Somerset County.

> We will be sharing your responses with the Environmental Protection
> Agency to support the Department's efforts to verify the status of steam
> engines on farms in Maryland.

From: "Benjamin E. Beale" <bbl65@umail.umd.edu>
To: Dave Mummert <dmummert@mde.state.md.us>
Date: 6126/02 1:27PM
Subject: Re: Steam Engines in St. Mary's County

Dave,
I am not aware of any steam engines being used by farmers or others in St. Mary's Co. As an Agricultural Extension Educator, I freguent many Amish and Mennonite farms and stay in close contact with the agricultural communty. I also live in St. Mary's county, and am familar with the various power units (diesel and gas) that our Mennonite and Amish communities use. Steam is no longer an efficient source of power.
Sincerely,
Benjamin Beale

----- --- - -------

Benjamin E. Beale
bbl65@umail.umd.edu

Extension Educator
Agricultural Sciences
St. Mary's Extension
301-475-4484

From: David Almquist <da17@umail.umd.edu>
To: <dmummert@mde.state.md.us>
Date: 12/14/01 4:09PM
Subject: Re: Fw: **Steam engines on Maryland farms**

Dave:
To the best of my knowledge no steam engines are used on Talbot County farms. You might try to get in touch with someone from the Tuckahoe Steam and Gas Association.
Dave Almquist
Extension Agent

On Fri, 14 Dec 2001 11:59:28 -0500 Wes Musser <wmusser@arec.umd.edu> wrote:

> If you have any info, please respond to Dave as I have not seen or heard
> about steam enginees on farms for a while-Wes.

> — Original Message —
> From: Dave Mummert <dmummert@mde.state.md.us>
> To: <Jhanson@arec.umd.edu>; <Wmusser@arec.umd.edu>
> Cc: <kirons@mde.state.md.us>
> Sent: Monday, December 10, 2001 10:10 AM
> Subject: Steam engines on Maryland farms

> Hello Dr. Hanson, and Dr. Musser,

> I am looking for some information to support a claim that the Maryland
> Department of the Environment, Air Quality Permits Program has made to the
> Environmental Protection Agency Region III. We told the EPA there are no
> boilers used exclusively to operate steam engines for farm use in Maryland.

> Let me give you a brief backround on the issue. Maryland's environmental
> laws provide for an exception to the requirement to obtain air quality
> permits for "boilers used exclusively to operate steam engines for farm
> use". A person has commented on this exception in regards to our
> Department's Part 70(Title V) federal operating program. The commentor
> stated that this exception is not allowed under the Clean Air Act's Title V
> requirements.

> The Department told the EPA that this issue is irrelevent by the fact that
> there are no steam engines in farm use at this time. I am only aware of
> steam engines in farm museums.

> I would like to use your names as experts on the subject of farm machinery
> that is currently being used on farms in Maryland to support the
> Department's claim. Your response would be added to the Department's
> response to the EPA on this issue.

> EPA is anxiously awaiting support to our reponse. I would greatly
> appreciate your assistance with this matter. Thank you.

> Dave Mummert

From: Don Schwartz <ds23@u mail. umd.ed u>
To: Mitchell Fischler <mfischler@mde.state. md.u s>
Date: 6111102 128PM
Subject: Request for assistance concerning steam engines on farms

Mitchell,

I am the Agricultural Extension Agent in Washington County Maryland and have been in this position for over 17 years having previously worked for Extension in Dorchester County MD.

To my knowledge the use of steam engines in Maryland is limited to severa steam shows when the old machines are fired up for exhibition purposes. One of these is in Smithsburg and the other is in Talbot County. About 20 years ago I did know of one sawmill on the Easten Shore that still used a steam engine. But that one has also been moved to a steam show grounds.

There are no Amish or other plain folks in the area who may use this sort of equipment for running machinery. There are however, Amish communities in both Garrett and St Mary's counties who may have need of steam but more likely use gas or diesel engines.

If I can be of any further assistance, please let me know!

Don

Don Schwartz
Extension Agent, AGNR
MCE, Washington County
7303 Sharpsburg Pike
Boonsboro, MD 21713
301-791-1304
ds23@umail.umd.ed u

From: eddie johnson <ej43@umail.umd.edu>
To: Dave Mummert <dmummert@mde.state.md.us>
Date: 6/10/02 2:42PM
Subject: Re: Steam engines in current use on farms

Dave Mummert wrote:

> Eddie,
>
> In followup to our telephone conversation, MDE is requesting your assistance in determining whether there are steam engines being used for farm and domestic use in your County. To the best of your knowledge, are you aware of any Amish farm communities in Wicomico County in which steam engines may currently be in use? NO
>
> Please return an email to me with your responses. Also, please provide your full name, your official position within the extension service, and describe your background and familiarity with farming operations in Wicomico County. Eddie Johnson, Wicomico County Cooperative Extension I am a life time resident and farmer of Somerset County

We will be sharing your responses with the Environmental Protection Agency to support the Departments efforts to verify the status of steam

> engines on farms in Maryland.

> If you can refer us to other persons that may have useful information,
> please forward this e-mail or include their names and phone numbers in
> the return email. The Department is truly appreciative of you taking time
> to respond to
> our request. Thank you.

> Dave Mummert
> Chief, Technical Support Division
> Air Quality Permits Program
> Maryland Department of the Environment
> 410-631-3206

From: Stephan Tubene <st112@umail.umd.edu>
To, Dave Mummert <dmummert@mde.state.md.us>
Date: 6/11/02 10:52PM
Subject: Re: Steam Engines currently in use on farms in Southern Maryland

Dear Christine, Ben, Dave,and Pam:
I apologize for a long forwarded message but I have been asked by Mr. Dave Mummert to provide information asked below.
To my knowledge, I don't recall having seen an steam engine operated by Southern Maryland farmers. If you do/or don't please respond to Mr. Mummert as he needs this information for his agency.
Thank you for your help.
Stephan Tubene
Coordinator, The Small Farm Institute
Univ of Maryland Cooperative Extension

Dave Mummert wrote:

> Stephan,

> In followup to our telephone conversation, MDE is requesting your
> assistance in determining whether there are steam engines being used for
> farm and domestic use in Maryland. To the best of your knowledge, are
> you aware of any Amish farm communities in which steam engines may
> currently being operated?

> Please return an email to me with your responses. Also, please provide
> your full name, your official position within the extension service, and
> describe your background and familiarity with farming operations in
> southern Maryland.

> We will be sharing your responses with the Environmental Protection
> Agency to support the Department's efforts to verify the status of steam
> engines on farms in Maryland.

> If you can refer us to other persons that may have useful information,
> please forward this e-mail or include their names and phone numbers in
> the return email.

> The Department is truly appreciative of you taking time to respond to
> our request. Thank you.

> Dave Mummert
> Chief, Technical Support Division
> Air Quality Permits Program
> Maryland Department of the Environment
> 410-631-3206

CC: <stubene@umail.umd.edu>, <cbergmark@tccsmd.org>, <bb165@umail.umd.edu>, <dm223@umail.umail.umd.edu>, <pk10@umail.umd.edu>

From: Christine Bergmark <cbergmark@tccsmd.org>
To: Stephan Tubene <st112@umail.umd.edu>
Date: 6/26/02 12:36PM
Subject: Re: Steam Engines currently in use on farms in Southern Maryland

Just back in the office today and got your email. I know of no steam engines in use in Southern Maryland, although Ben Beale is much more closer connected with the Amish community.

Stephan Tubene wrote:

>Dear Christine, Ben, Dave,and Pam:
>I apologize for a long forwarded message but I have been asked by Mr. Dave
>Mummert to provide information asked below.
>To my knowledge, I don't recall having seen an steam engine operated by
>Southern Maryland farmers. If you do/or don't please respond to Mr. Mummert
>as he needs this information for his agency.
>Thank you for your help.
>Stephan Tubene
>Coordinator, The Small Farm Institute
>Univ of Maryland Cooperative Extension

>Dave Mummert wrote:

>>Stephan,

>>In followup to our telephone conversation, MDE is requesting your
>>assistance in determining whether there are steam engines being used for
>>farm and domestic use in Maryland. To the best of your knowledge, are
>>you aware of any Amish farm communities in which steam engines may
>>currently being operated?
>>
>>Please return an email to me with your responses. Also, please provide
>>your full name, your official position within the extension service, and
>>describe your background and familiarity with farming operations in
>>southern Maryland.

>>We will be sharing your responses with the Environmental Protection
>>Agency to support the Department's efforts to verify the status of steam
>>engines on farms in Maryland.

>>If you can refer us to other persons that may have useful information,
>>please forward this e-mail or include their names and phone numbers in
>>the return email.

>>The Department is truly appreciative of you taking time to respond to
>>our request. Thank you.

>>Dave Mummert
>>Chief, Technical Support Division
>>Air Quality Permits Program
>>Maryland Department of the Environment
»410-631-3206

Su lemental Opinion of the Maryland Attornev General
(Title V Operatinc.1 Permit Program)

Pursuant to my authority as Attorney General of Maryland. for the reasons discussed beiow, it is my opinion that \Iarviand has adequate legal authority to administer and enforce the ,ederal Clean Air Act Title V Operating Permit Program, specifically that: (1) legislation signed by Governor Glendening on May 16, 2002 expands Maryland standing law for judicial review of Title V permits to be the equivalent of federal standing law; (2) 2-611 of the Environment Article does not prohibit the Department from bringing an enforcement action against a party to a plan for compliance for violations of statutes or regulations that are not expressly the subject of the prim; (3) Maryland's permitting authority extends to all sources of air pollution that are required to be covered by the Title V program; (4) the Department of the Environment has authority to consider all comments received on Title V permits and to include all such comments in the record for judicial review; and (5) EPA **is entitled to a 45-day review and comment period in the event the Department proposes to issue a final decision in a contested case that would modify the terms and conditions of a challenged Title V permit.**

Standing to Seek Judicial Review of Title V Permits

On ~'Yfay **16, 2002, Governor Glendening signed into law identical bills -- House Bill 5 and Senate Bill 248 -- which expand Maryland standing law for persons seeking judicial review of final decisions by the Department to issue, renew or revise Title V operating permits to** *any person who meets the threshold standing requirements under federal constitutional* **law, and who participated in a public participation process where such process was required by statute or regulation. As a result of the legislation, Maryland standing law for persons seeking judicial review of Title V permit decisions is now equivalent to federal constitutional standing law. Enactment of the legislation fully addresses the standing deficiencies raised by EPA in its Proposed and Final Interim Approval Notices published in 60** *Federal Register* **55231 and 61** *Federal Register 3473;,* **respectively.**

Section 2-611 Plan For omoliance

Section 2-611 (a) of the Environment Article of the Maryland Code, entitled *Plan for Compliance,* provides:

> **A person is not subject to action for a violation of this title or any rule or regulation adopted under this title, so long as the person acts in accordance with a plan for compliance that:**
>
> **(1) The person has submitted to the Secretary; and**
>
> **(2) The Secretary has approved, with or without amendments, on the recommendation of the Air Management Administration.**

This provision shields a regulated entity from an enforcement action for violation of a statute or regulation so long as the entity.meets its obligations under an approved plan to achieve compliance with the statute or regulation. The Department has consistently, and without

exception. nterprcted 2-61 l to apply only to *violations that are expressly addressed by the compliance Plan.* L-rnder well-established- principles of administrative law, an agency's interpretation of its enabling statutes is entitled to deference. *Vlagan* v. *Medical Vfutual, 331* 1vld. 333. *3-16 (1993); 'Vestinghouse* v. *Callahan, 103* 'vId. *App. 25, 33* ("we give considerable ~veight to the construction of a statute by an agency responsible for administering it").

The earliest version of 2-611 dates back to 1967, when it was codified in 70}(d). of article *43* of the Maryland Code. Prior to 1982, 703(d) read as follows:

> A violator who has submitted a plan for compliance with any provision of this subtitle or rule or regulation promulgated pursuant thereto and has had that plan or amendments to it approved by the secretary upon the recommendation of the Division of Air Quality Control shall not be considered to be in violation of *such provision of this subtitle or rule or regulation promulgated pursuant thereto* as long as he acts in accordance with the original or amended plan. The secretary shall act upon any plan within ninety (90) days after such plan has been submitted to him.

This earlier version of 2-611 clearly granted immunity from prosecution only for those statutory or regulatory violations that were the subject of the plan for compliance. The earlier provision was slightly revised to its present form in 1982 when 703 (d) was recodified as 2-611 of the Health General Article. The revised language, however, was not intended to effect a substantive change in the provision, as is clear from the Revisor's vote that appears in the 1982 annotations for 2-611. It states "[t]his section is new language *derived without substantive. change* from former Article 43, 703(d).

Moreover, any other interpretation would leave a regulated entity free to violate any statute or regulation not expressly the subject of a plan for compliance with impunity, so long as it remained in compliance with the plan. Such an interpretation is inconsistent with the legislative intent as, expressed in 2-602, 2-603, 2-609, 2-609.1, 2-610, and 2-610.1 of the Environment Article to provide the Department with meaningful and effective enforcement tools to ensure compliance with regulatory requirements. These sections authorize the Department to seek administrative, civil and criminal penalties, as well as injunctive relief, for any violation of Title 2, Subtitle 6 or any regulation adopted under Title 2. I am aware of no decision in which a court has interpreted 2-611 to provide blanket immunity for violations of statutes or regulations that were not the subject of the compliance plan. Accordingly, violations that are not specifically addressed in a 2-611 compliance plan would be actionable by the Department, and if federally enforceable, by the United States Environmental Protection Agency and citizens under the citizen suit provisions of the federal Clean Air Act.

Boilers used to Operate Steam, Engines for Farm and Domestic Use

Section 2-402(2) of the Environment Article prohibits the Department from requiring air quality control permits for boilers used exclusively to operate "steam engines for farm and

iomestic Ise - Department interprets "Farm and domestic use" in the conjunctive, as opposed to disjunctive. form. This exemption from air quality control permit requirements dates 'back to 19-0. Although the exemption remains in State law, Department staff advise me that steam engines are relics of the past because the technology is obsolete. and that they have not been in use on Maryland farms for many years. The Maryland Agriculture Extension Program, %%which provides technical expertise to farmers and facilitates technology transfer, has confirmed that steam engines are no longer in use on Maryland farms. Department staff have no expectation that steam engines *will* be used again in the future. Accordingly, since there are no longer any sources subject to the exemption, Maryland's Title V operating permit program applies to all sources that are required to be covered by the Title V permit program.

Record for Judicial Review

Code of Maryland Regulation ("COMAR") 26.11.03.12E(2) governs compilation of the record for judicial review of Title V permits that do not involve a contested case. The regulation requires the record to include those documents and other significant information considered by the Department in deciding whether to issue or deny a permit, and any information submitted by the person seeking judicial review that the Department did not consider. EPA has expressed concern about the regulation's implication that the Department need not consider or include in the record all germane comments that it receives on Title V applications. Department staff advise me that they have never applied the regulation in this manner. The Department gives consideration to *every* comment it receives on Title V applications and prepares a written response to comments. All comments, along with the written response to comments, are placed in the administrative record. Department staff further advise me that the Department has no intention of deviating from this practice in the future, and that the Department intends to propose amendments that will conform the regulation to its current practice. Because nothing in the Department's enabling statutes or the language of the existing regulation restricts the Department's authority to give consideration to all comments it receives on pending Title V applications, or to place all comments in the administrative record, it is my opinion that Maryland's laws provide adequate legal authority for the Department to consider all comments it receives on pending Title V permits, and to place all such comments in the administrative record.

Issuance of Final Decisions in Title V Contested Case Permit Adiudications

CO.N,IAR 26.11.03.11E governs issuance of final agency decisions in Title V contested case permit adjudications. The regulation requires the Department to provide EPA with a copy of the administrative law judge's proposed decision and allow EPA a 45-day comment period prior to issuing a final decision the case. The regulation is silent on the provision of a further 45-day comment period to EPA in the event the Department proposes to issue a final agency decision which modifies the terms and conditions of the permit which is the subject of the contested case. However, under CONIAR 26.11.03.09B, .16F and .17D, all significant and minor permit modifications are subject to a 45-day review period by EPA. It is my opinion that the Department's issuance of a final decision pursuant to COMAR 26.11.03.11E which makes significant, or minor modifications to a challenged Title V permit is subject to the review and comment provisions in regulations .09B,..16F and .17D. Therefore, EPA must be provided with

,1 45-da,, -t% i,-w Xid comment period prior to issuance of a final decision which makes sigzuficant or minor modifications to the permit.

Finally, since the Attorney General's initial opinion on the adequacy of Maryland laws to administer and enforce the Title V program was provided to EPA in 1995, the Department has adopted various amendments to the Title V regulations. Effective June 16, 1997, the Department adopted COMAR 26.11.03.01M to incorporate by reference the federal Acid Rain requirements codified in -10 CFR Part 72. That regulation was twice revised effective October 16, 2000 and July 9, 2001 to incorporate updated federal Acid Rain requirements. Effective July 9, 2001, the Department promulgated CONIAR 26.11.0-3.01N, which adopted the CANT rule by reference. Also effective on July 9, 2001, the Department adopted various minor amendments to **COMAR 26.11.03)3.04A** and C, 26.11.03.07, .08 .11, .15, .17, .20 and .21 to correct deficiencies identified by EPA. Additional deficiencies identified by EPA were corrected through amendments to CONIAR 26.11.03.0113 and COMAR 26.11.03.18 and .19, effective on December 10, 2001. None of the foregoing amendments has impaired the Department's legal authority to administer and enforce the Title V Operating Permit Program in full compliance with all federal requirements.

. o | Curran, Jr.
ttorney General of Maryland

DE MARYLAND DEPARTMENT OF THE ENVIRONMENT
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(410) 631-3000 • 1-800-633-6101 • http://www.mde.state.md.us

Parris N. Glendening
Governor

Merrylin Zaw-Mon
Acting Secretary

JUL 1 6 200Z

Donald S. Welsh, Regional Administrator
Air Protection Division (3RA00)
U.S. Environmental Protection Agency, Region III
1650 Arch Street
Philadelphia PA. 19103=2029

Below are Maryland Department of the Environment's commitments to address a number of issues identified by EPA Region III relative to Maryland's Part 70 permit program.

Boilers Used to Operate Steam Engines for Farm and Domestic Use

Section 2-404(2) of the Environment Article prohibits the Department from requiring air quality control permits for boilers used exclusively to operate "steam engines for farm and domestic use". The Department interprets "farm and domestic use" in the conjunctive, as opposed to disjunctive, form. The Department requested assistance from the Maryland Cooperative Extension (MCE) to determine whether any steam engines are currently in use in the state that would fall within this category. MCE employs approximately 200 faculty and approximately 200 support staff and contractual employees located at the University of Maryland, College Park, University of Maryland Eastern Shore, 23 counties, Baltimore City, and four research and education centers. Agents of MCE from **the University of Maryland and Talbot, Anne Arundel, Prince George's, St. Mary's, and Cecil Counties confirmed the fact that steam engines are no longer used in agricultural production. According to MCE staff, steam engines only appear in museums of antique farm equipment and at agricultural exhibitions and farm fairs. The Department has no expectation that steam engines to operate boilers for farm and domestic use will be used in the future. If in the future, however, the Department discovers that a steam engine is in operation and that the farm or facility is a major source as defined in Title V, the Department is committed to initiate the actions that would be necessary for the source to obtain a Part 70 permit. Furthermore, the Department is committed to requiring all sources that meet the applicability requirements of Title V to obtain a Part 70 permit.**

Six Month Monitoring Revolts

With regard to the issue of 6-month monitoring reports required by §70.6(a)(3)(iii)(A), the Department commits to issuing all future permits with this 6-month reporting requirement. The Department's current regulations at COMAR 26.11.03.06(C)(7)(a) and (b) meet these federal requirements. In addition, the Department commits to issuing permits requiring that these 6-month reports be submitted regardless of whether or not the facility is reporting an excess emission or deviation.

Record for Judicial Review

Code of Maryland Regulations (COMAR) 26.11.03.12E(2) governs compilation of the record for judicial review of Title V permits that do not involve a contested case. The regulation requires the record to include those documents and other significant information considered by the Department in deciding whether to issue or deny a permit, and any information submitted by the person seeking judicial review that the Department did not consider. EPA has expressed concern about the regulation's implication that the Department need not consider germane comments that it receives on Title V applications. With regard to the issue of the Department's consideration of public comments received during the public participation process of the Part 70 permit program and submitting all public comments in the record for judicial review, the Department commits to assuring that all germane comments are considered and placed in the record for judicial review. This practice is not new in Maryland. The Department in all its public participation processes has, in practice, considered all comments, regardless of the nature of the comment. Again, the Department commits to continuing its practice of considering all public comments and placing them in the record for judicial review.

Issuance of Remaining Title V Permits

With respect to the issuance of the remainder of our initial group of Part 70 operating permits, our total count of initial Title V sources requiring permits is 167. This number reflects our initially identified number of sources, adjusted to remove Title V sources that have either permanently shut down or have received valid synthetic minor permits, and to add sources that were not on the initial list but have subsequently been identified as being initial Title V sources. As of December 1, 2001, we had issued final permits to 120 of these Title V sources, which leaves 47 permits that we need to issue to complete the initial group of Part 70 operating permits.

The Department commits to issuing the remaining 47 Part 70 permits within two years of receiving full approval of its Part 70 permits program and according to the following schedule:

Milestone Dates	Percentage of Remaining Permits Issued
First 6 month period	25%
Second 6 month period	50%
Third 6 month period	75%
Final 6 month period	100%

If you have any questions or need additional information, please contact me at (410) 631-3084 or have a member of your staff contact Ms. Ann Marie DeBiase at (410) 631-3260.

Sincerely,

Merrylin Zaw-Mon
Acting Secretary

MZM/j m

Attachment 5

TITLE V PROGRAM COSTS
(Revenues v. Expenditures)
July 2001

INTRODUCTION

Maryland has been implementing the federal Title V Operating Permit Program since receiving interim program approval in July 1996. Prior to that, development of the Program was occurring. Between mid-1996 and early-2000, the Program was ramping up, and is at the point now where operation is considered to be in a steady-state mode.

Given the stable operation, a review of the basis used in the past - during the formative years of the Program - for defining Title V revenues and Title V expenditures is warranted. This paper provides such a review and will either confirm the past basis or provide a rationale for adjusting the past basis where needed (to correct misassumptions or misapplications of assumptions).

BACKGROUND

Maryland's Environment Article §2-403 establishes fee-setting authority for air pollution-related permits issued under §2-401 of the Environment Article. The categories of permits subject to fees under the authority granted are the Air Quality Permit to Construct, PSD and NSR approvals, the State Permit to Operate and the Federal Part 70 Permit to Operate. These federal operating permits are commonly called Title V permits. The statute directly sets forth a fee schedule for emissions of regulated pollutants from those permitted sources subject to paying emissions fees. The Code of Maryland Regulations (COMAR) establishes that Part 70 sources and State Permit to Operate sources pay the emissions fee. COMAR also defines which sources are subject to the Title V Program requirements and which are subject to State Permit to Operate Program requirements.

All permit fees are placed in the Maryland Clean Air Fund, per the Environment Article. The lezislation concerning the Fund places a cap on the amount of funds allowed to remain in the Fund. The cap is $750,000.

Maryland has approximately 500 sources subject to Maryland's State Permit to Operate Program requirements. Nearly 170 of these sources are also subject to federal Part 70 Operating Permit Program requirements. By virtue of being subject to either set of requirements, all 500 sources are subject to emissions-based fees. When a source is subject to both sets of requirements, only a Part 70 permit is issued, and that permit constitutes both the federal and the state operating permit. The dual permit contains both federally enforceable requirements and requirements that are enforceable by Maryland alone.

REVENUES

As stated earlier, 500 sources in Maryland hold an operating permit. Approximately 330 hold a state-only operating permit and nearly all of the remaining 170 sources hold a dual Title V/state operating permit (a few sources, ;uch as landfills, are not subject to state

operating program requirements, but are subject to Title V requirements). The revenues generated from the payment of the emissions-based fees by the 500 facilities subject to either the state or the federal operating permit program requirements are used to support activities associated with administering both the federal program and the state-only operating permit program.

For the 330 or so sources that are truly only subject to Maryland's State Permit to Operate Program, the revenues generated via payment of the emissions-based fee are considered to be non-Title V revenues and are used solely to support the state-only operating permit program. A significant portion of the revenues generated via payment of the emissions-based fee by Title V sources are considered Title V revenues, for the majority of the permit requirements and the majority of activities associated with regulation development, permit to construct/operation issuance, inspection, etc. link to Title V requirements. A small number of permit conditions and a limited amount of state-only program activities are not, however, so linked to Title V. The management of Maryland's Air Toxics and odor nuisance programs are the two most significant examples of activities not linked to the federal Title V Program. Other requirements, such as certain monitoring requirements that have not been made a part of Maryland's State Implementation Plan, are also not linked to the Title V Program. Fee revenues associated with supporting those activities not linked to the Title V Program are considered to be non-Title V revenues.

The need arises, then, to determine what percentage of revenues generated by the payment of fees from Title V sources holding a dual federal/state operating permit are assignable to supporting the Title V Program and what percentage is assignable to supporting the state-only operating permit program. In examining this issue, Maryland has chosen to define this percentage as the ratio of FTEs generally associated with administering the state air toxics and the odor nuisance programs to the number of FTEs associated with administering the Title V Program (all facets: regulation development, planning, monitoring, permitting and compliance). We estimate this ratio to be 9:110 or 8%. This means that 92% of the revenues generated by the payment of emissions-based fees by Title V sources support the Title V permit program and 8% of these fees support the state-only (non-Title V) program. Overall, the revenue generated from Title V sources is as follows:

Fiscal Year	Total Revenues	Title V Fraction 92%
2002 (projected)	$4,100,000	$3,772,000
2001	$4,016,472	$3,695,154
2000	$2,731,774	52,513,232

Note: Prior to FY01, the revenues from four Phase I acid rain plants were not, per the Clean Air Act, considered Title V revenues, which is why revenues are markedly lower in FY2000

EXPENDITURES

The Clean Air Act states that expenditures of Title V revenues are to be used to cover all reasonable (direct and indirect) costs required to support operation of the Title V

Program. **In several guidance documents, the EPA has stated that operation of the Title V Program is not limited strictly to permit development and permit issuance activities. The operation of the program also involves pre-permit and post-permit activities, such as regulation development and inspection of sources, respectively. The following sets forth Maryland's method for determining the type and the extent of expenditures attributable to Title V Program activities.**

Direct cost accounting of expenditures

There are several levels of cost accounting that need to be used to reasonably define all operational costs associated with the Title V Program. The most basic level is to account for expenditures related to those activities that are directly associated with managing the Title V Program or regulating in some respect a Title V source. Permitting or inspecting a Title V source or developing a regulation concerning an applicable requirement of the Title V Program are examples of such activities. Whenever a direct Title V-related activity is undertaken, the effort is recorded on a timesheet via use of an activity code. (Maryland's time-coding system relative to the Title V Program is included as an attachment to this document).

Direct cost accounting is used by professional staff within the Air and Radiation Management Administration's (ARMA) Air Quality Permits Program and Air Quality Compliance Program and by staff within the Attorney General's Office when undertaking a Title V-eligible activity. Individual memos, all dated September 28, 1998 and sent to the managers of these two ARMA programs and to MDE's Principal Counsel, set out general guidance for determining the types of activities that would be considered Title V eligible.

Cost accounting for certain clerical/administrative staff activities

For clerical and administrative staff within the two ARMA programs (clerical and administrative staff in the Attorney General's office generally do not spend time on Title V activities), however, a direct cost accounting method is not practical. The general nature of the work performed by such staff does not lend itself to such a method. Also, the work effort is constantly shifting among minor Permit to Construct activities, State Permit to Operate activities, synthetic minor activities for both Title V and non-Title V sources and Title V source activities, so it would be unreasonable to expect clerical and administrative staff to know at all times to which activity there work applies and to constantly keep track of these activities as they shift around. To address this issue, we chose to use an indirect cost accounting method to capture such activity costs. The method chosen was the use of a 60% factor. Specifically, 60% of each hour recorded on a time sheet by clerical and administrative staff within the permitting and compliance program is assigned via a cost code to the Title V Program. The 60% figure is based on the assumption that the workload within these two programs is split 60/40 between Title V and non-Title V activities. A recent review of the validity of this assumption was undertaken. The result showed the assumption to be very reasonable, as a 63% figure was obtained from the validation exercise (see attached fiscal information).

Cost accounting for other air quality control program activities

Other activities, such as State Implementation Plan (SIP) development and ambient air monitoring, are not directly linked to either Title V sources or the management of the program, and capturing the effort on a timesheet cannot be done via a direct accounting of time. For example, ambient monitoring measures the concentration of a variety of pollutants in the atmosphere. These pollutants come from three broad source categories: stationary, area and mobile. When a pollutant is emitted from any source it becomes part of the general mix of pollutants in the air, losing its identity in the process. As such, when monitoring is undertaken, there is no distinct link to any particular pollutant from any particular source. Monitoring activities are considered, therefore, to support the overall operation of Maryland's air program. A similar situation exists relative to most SIP development activities: regulation development and overall planning activities, at times, cannot be determined to directly link to a Title V source or group of sources. At other times, a regulation or. planning activity affects both Title V and non-Title V sources (for example, a general monitoring or recordkeeping requirement). In these situations, a method is needed to determine the percentage of a given activity that is linked to the Title V Program.

A number of methods to determine what portion of time spent on general planning and monitoring activities should be assigned to the Title V Program were examined. The one that seemed most logical and most stable, and which was eventually chosen, was the ratio of VOC and NOx emissions from Title V sources to that of VOC and NOx emissions from all sources (area, mobile and stationary). This ratio was chosen for it focused solely on ozone precursor emissions, which we believe is appropriate, since addressing ground-level ozone is the principal focus of Maryland's air pollution control program (this may change as PMfine data is amassed and analyzed) and VOC and NOx data are the most reliable pollutant data available. Firm, abundant PMfine and other pollutant data are not available for all source categories, although we recognize preliminarily that utilities and large industrial boilers (all of which are Title V sources) will more than likely account for a sizable percentage (at least one-third) of the PMfine inventory. Until better PMfine data are available, we will assume the same 3:10 ratio exists for PMfine as it does for ozone precursor emissions. The ozone precursor emission ratio for Title V sources versus all emission sources, using either the 1990, 1993 (unofficial) or 1996 inventory data, is 3:10. As such, 30% of every unit of time spent undertaking air monitoring and planning activities is assignable to the Title V Program.

For the Air Monitoring Program, the 30% ratio should be applied to all expenditures universally across the Program. For the Planning Program, the 30% figure should be applied to all expenditures except those related to mobile source conformity, climate change or Smart Growth. Conformity and Smart Growth activities generally relate to mobile source and land use issues, which are not linked to the Title V Program. Climate change is considered a state initiative, so such costs should not be assigned to the federal (Title V) program.

Cost accounting for the Office of the Director

ARMA's Office of the Director, which includes the Deputy, two public outreach coordinators, two secretarial staff and the Office of Operational Services and Administration (fiscal and personnel operations), also do work across a broad spectrum of air programs, including Title V, and across two programs that do not link to Maryland's ambient air quality control programs: Radiological Health and Asbestos Management. Also, the staff within the Director's Office face the same problem as that of the Permits/Compliance clerical and administrative staff - that of being unable to always be aware of the work category a given task would fit into and the speed at which tasks shift among the various work categories. As such, an indirect cost accounting method is also appropriate here; and, because of the added factor of involvement in overseeing the Radiation and Asbestos programs, a different percentage (other than 30%) needs to be applied to account for the amount of their time attributable to the Title V effort. A reasonable method is: (from above) 30% of Planning, Permitting, Monitoring and Compliance equates to 34 employees. This number of employees divided by the entire number of employees in ARMA would represent,the percentage of ARMA employees that are linked in some way to the Title V Program. This percentage is 16%.

HIDE indirect costs

For every dollar of fee-related funds expended by ARVIA, an additional 13.49 cents is used by the Department as an indirect cost for departmental operations that support the operation of ARMA. As such, this percentage needs to be applied to all Title V expenditures for departmental support of the Title V Program.

Expenditure summary

For State FY2001, Title V revenues amounted to 54,016, 472 (based on closeout records). Revenues this ('02) state fiscal year will likely be close to this amount, for the increased revenues from the built-in escalation factor in the fee schedule is nearly offset by the reduction in emissions due to pollution control programs being implemented. Under the rationale provided above, the FY02 revenue/expenditure picture would look as follows:

Revenues from Title V sources	$4,100,000
Title V fraction (92%)	$3,772,000
Permits/Compl./Legal/Director's Off.)	($1,864,000)
Subtotal	$1,908,000
30% of Monitoring	($767,000)
Subtotal	$1,141,000)
30% of Planning (as applicable)	($650,000)
Subtotal	$491,000
Indirect costs applied to expenditures	($442,600)
Carry forward into FY03	$48,400

Under a steady-state operation, which is currently the case, the fiscal picture presented above should change very little into the foreseeable future. As such, neither the amount of revenues being received nor the level of expenditures occurring over the course of a fiscal

year would place ARMA in jeopardy of causing the $750,000 cap on the Clean Air Fund to be exceeded. As a practical mater, therefore, there is no need to amend the Environment Article to eliminate the cap.

	FY 2001			
Permits	7106	$	**1,473,114.03**	
	Title V	$	931,315.58	63%
	CAF	$	157,219.80	11
	Air Grant	$	384,578.65	26%
Planning	7105	$	1,727,141.10	
	7145	$	58,383.77	
	7123	$	145,000.00	estimated
	Total	$	1,930,524.87	
Monitoring	7103	$	1,704,441.82	
	7145	$	473,034.00	
	Total	$	2,177,475.82	